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ESTABLISHMENT OF A BOUNDARY WATERS INTERNATIONAL COMMISSION

HEARING

BEFORE THE

SUBCOMMITTEE ON
INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

AUGUST 23, 1985
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ESTABLISHMENT OF A BOUNDARY WATERS INTERNATIONAL COMMISSION

FRIDAY, AUGUST 23, 1985

U.S. SENATE,
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
International Falls, MN.

The subcommittee met at 2:45 p.m. at Rainy River Community College, Hon. David Durenberger (chairman of the subcommittee) presiding.

Present: Senator Durenberger and Congressman Oberstar.

OPENING STATEMENT OF SENATOR DURENBERGER

Senator DURENBERGER. The hearing will come to order. In the old days we would start these with the cartoons first and then the serious film. Today we are not going to do that. We are going to go right to our business.

Let me start by welcoming all of our witnesses and all of our friends and people that live in the area and have a concern for this particular—the subject matter of this hearing of the Intergovernmental Relations Subcommittee of the Senate Governmental Affairs Committee. I just want to thank everyone for coming, and I look forward to the testimony of all of the witnesses.

The purpose of the hearing is to take testimony on the establishment or the potential establishment of a Boundary Waters International Commission as a vehicle to restore predictable and sane management of our valuable and historic border resources.

Last Saturday I returned to the United States from 2 weeks in Sweden, Switzerland, West Germany, and Poland, where I got an earful and an eyeful about the needs for international cooperation. In this case, it was atmospheric pollutants like acid rain, which has already killed lakes and trees throughout Western Europe and is threatening not only the ecology, but the survival of many communities in that part of Europe. Some European countries have taken steps to reduce acid rain; others only minor actions; and some none at all, just choosing to ignore the problem.

Over and over again from experts I heard pleas for a coordinated international commitment to solving these problems. In this sense, man-made boundaries are totally irrelevant. One nation acting alone can never do enough. Two nations acting in a conflicting or a hostile way achieve nothing.

We are not here today to discuss acid rain, though we must continue to do so in other forums, but the principle is much the same.

The need for cooperation between interdependent nations to protect natural resources both for ourselves as people and for future generations.

Now, predictable management and consistent management of resources particularly in the border between two great nations, two great friends, is a difficult task. Best management is not independent management, as we often see, and particularly as we have seen lately in the province of Ontario.

Regulations such as fish limits and user fees which pit one user against another do not accomplish the goal of resource protection. It antagonizes neighbors who, by virtue of a shared resource, should be and must be each other's friends.

Some of the issues that many of you in this audience in particular are familiar with that fall in the category of issues that antagonize neighbors include issues which were covered in a report which I recently put out, and some of it is covered in a report produced for the Boundary Lakes Association and others by Don Parmeter, and some of these other issues have come from concerned citizens of this area over the years that I have been employed as one of your U.S. Senators. They include the issues of camping fees, commercial use regulations, cross deputization, customs policies. I mean, not a winter goes by what but what we aren't debating either our or Canadian customs policy. The 18 fish regulation, immigration policies, provincial waterway parks, outfitter guide permits, and user fees. I guess I could go on and on with examples of the conflicts and the potential conflicts between these people who are neighbors across these great lakes.

Some of these issues are Federal or national in nature. Created by agencies and the actions or the inactions of Federal or national agencies of the U.S. or the Canadian Government. Others are provincial or state in nature, created by the action or the inaction of provincial governments or the State government particularly in the State of Minnesota.

In many cases, they are policies which have been implemented for reasons which go beyond protection of the natural resource involved.

Congressman Stangeland and Congressman Oberstar, who will soon be here to testify, and Senator Rudy Boschwitz and I have endeavored through the U.S. Department of State and through the Canadian Embassy in Washington to eliminate those discriminatory conflicts which are in the jurisdictions of national government agencies on both sides of the border.

Although several discussions have taken place recently between Secretary of State George Shultz and Canadian External Affairs Minister Joe Clark, it does not appear that a diplomatic solution to a lot of these problems is in sight where the national and the provincial conflicts continue.

Unfortunately, some of the most serious conflicts arise from economic competition, and these are made worse by provincial regulations or by failure of Minnesota and Ontario governments to resolve management conflicts before they become economic problems. At that point, they become problems—or they have become problems for Minnesota's Congressional delegation when we are called

on to get even with the Canadians on issues like Garrison Dam, on issues like imports for soft woods, and on issues like acid rain.

Earlier this summer when I was in International Falls and later in Baudette and Warroad, I decided to launch a three-step program to identify the highest priority border issues and to try to help the larger community of Americans and Canadians create a process to resolve these issues.

Step one was the circulation of Don Parmeter's broad assessment of border issues to gather the input from families, from local business people, and from local government leaders. Responses to this mailing will be made a part of today's hearing record, and the record for that purpose and for purposes of anyone else's written testimony will remain open until September 13 of this year.

Step two is today's hearing; and step three will be based upon the findings at this hearing and the reaction to the earlier mailing.

It is my present intention to introduce legislation to create a conflict resolution medium like the joint Canadian-U.S. commission which I have already proposed and which Congressman Stangeland has already proposed. The purpose of that proposed commission is to make recommendations for a management plan for fishery and other resources.

The commission would be made up of three members from each country and would have 5 years to carry out its work. I would like to say at this point what the commission will and will not do. The issues which fall under the jurisdiction of State and Federal agencies and which do not adversely affect the other country would be referred only to those Federal and State agencies. Those disputes, however, those issues and those policies which are uniquely international in character, have an impact if taken on one side of the border on persons or uses on the other side of the border, would be the kind of issues that would be the agenda of this international commission.

Specifically, the Boundary Waters Canoe Area Wilderness Act is not to be reopened by this kind of a commission, nor would legislation establishing Voyageurs National Park be reopened by this kind of a commission. There are plenty of other issues in conflict to be dealt with by a Minnesota-Ontario Border International Commission. Many of these issues have been debated both here and in Washington over the past 75 years, and reopening issues like the BWCA or the Voyageurs National Park around this particular debate will not serve the cause of mediating disputes.

We in Minnesota can be proud of our natural resources, just as the residents of Ontario can be proud of their resources. It is my hope that we can work together to manage and conserve these resources for the sake of both of our two great nations.

Now, I understood as we were flying in that my colleagues in the Congress were right behind us, but they were in the air, so they obviously are not down yet, and so the testimony of the two members of Congress and of my colleague Rudy Boschwitz will be taken after they arrive. So I will call up now our first panel. And this, I guess, is our panel table over here.

Our first panel will include J. Lamar Beasley, who is a Deputy Chief of the U.S. Forest Service in the Department of Agriculture; Carroll Brown, who is the Director of the Office of Canadian Af-

fairs for the U.S. Department of State; and Russ Berry, the Superintendent for the Voyageurs National Park.

Mr. JOHNSON. Senator Durenberger?

Senator DURENBERGER. Doug.

TESTIMONY OF HON. DOUGLAS JOHNSON, STATE SENATOR FROM THE STATE OF MINNESOTA

Mr. JOHNSON. You know, I think that—whether there was a misunderstanding or what, I came here to be able to represent some of my constituents on the Boundary Water Canoe issue which has raised havoc amongst a lot of people in my district, the economy, resort buyouts that have hurt our communities, motor restrictions that have really devastated thousands of people in the community that I live in, and I thought that was one of the reasons for setting up a commission to look at things like that to see if there could be some agreements or and some enforcements of the treaties that are bound decisions between our two countries, and that was my purpose of coming here. I think most of the issues that you seem to be addressing in this hearing in the creation of this commission are more for the western part of the border and ignores most of the problems on the eastern part of the Minnesota border. So I'm quite disappointed. I thought that would be a vital part of—the U.S. Forest Service is here, but that should be an issue that would be addressed by that commission. And I understand that you were not in the U.S. Senate when that 1978 law passed, but we have been desperately trying to get an audience for years. The response is always that, "It is too controversial. The decisions have been made." But let me tell you, we have thousands of people that need someone to listen, whether it is a Republican or a Democratic member of Congress that is willing to have some testimony afforded to take their case. And I guess that was my purpose for requesting to be here, and I don't see any need for being on the panel, because apparently it is not going to address the issue that thousands of people that I represent where they are very negatively economically impacted, and no one seems to have the courage to take on those who would call that too controversial of an issue and being resolved.

Senator Durenberger, I have always had a lot of respect for you, and I'm sure I will continue, but——

Senator DURENBERGER. Let me just say while you're standing there that I have enough trouble getting support for what we are doing here today. I can't get the Governor; I can't get anybody from the State to come up here. You know, it is tough enough for me to get some people who are interested in dealing with just one piece of this, and to undertake to expand it all the way across to include that issue was an impossibility. And I'm sure in another forum—I mean, I appreciate your being here, and I obviously—because we have discussed this issue, I obviously appreciate everything that you have said. It is just that this is not the forum, nor the intended vehicle, to deal with that kind of an issue, and I'm sure we can do it under some other auspices at some other time.

Mr. JOHNSON. I don't think there is anything that should be more—have the power of law than international treaties that were

signed between the U.S. Government and the Canadian Government. We think they are being violated, and we have not had any chance or any opportunity to make our case. And we saw this commission—we are interested, yes, in user fees, and we are interested in the fishing problems, but this is a very, very critical issue and really is what we saw as the ability to have a commission so we could have someone to speak to and perhaps get some changes or enforcement of the international treaties from the International Joint Commission. There is a procedure to do that. And apparently that's not the case, and I'm certainly not trying to embarrass you, Senator. We have had some good relations.

Senator DURENBERGER. But you may want to stick around. I mean, you're a very powerful member of the Minnesota State Senate, and I think the folks over here on this side——

Mr. JOHNSON. I think I'm at the wrong meeting. Thank you.

[Mr. Johnson's prepared statement follows:]

PREPARED STATEMENT OF STATE SENATOR DOUG JOHNSON

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY BEFORE YOU ON THE PROPOSAL TO ESTABLISH A BOUNDARY WATERS INTERNATIONAL COMMISSION.

FEDERAL LEGISLATIVE ACTIONS IN RECENT YEARS HAVE HAD A DRAMATIC IMPACT ON THE ECONOMY OF THE BORDER AREAS OF OUR STATE. A NUMBER OF BORDER COMMUNITIES IN MY LEGISLATIVE DISTRICT HAVE EXPERIENCED A SEVERE LOSS OF BUSINESS AND AN EXODUS OF THEIR PEOPLE AS THEY HAVE ADJUSTED TO THE FEDERAL ACTIONS WHICH HAVE DEVASTATED OUR ONCE THRIVING LOGGING AND TOURISM INDUSTRIES. AS WE HAVE LOOKED FOR ASSISTANCE FROM WASHINGTON, OUR ANSWER HAS ALWAYS BEEN THAT THESE ISSUES ARE TOO CONTROVERSIAL.

WE ARE UNDERSTANDABLY HESITANT TO PUT OUR FAITH IN A FEDERAL DECISION-MAKING BODY. HOWEVER, WE ARE DESPERATELY SEEKING OPPORTUNITIES TO REVERSE THE DOWNWARD SPIRAL OUR ECONOMY HAS TAKEN AND CAN NOT AFFORD TO TURN OUR BACKS ON ANY OFFER OF ASSISTANCE. I SUPPORT THE IDEA OF FEDERAL INVOLVEMENT IN FINDING SOLUTIONS TO THE PROBLEMS WE FACE ALONG OUR NORTHERN BORDER.

I BELIEVE THAT THE BORDER COMMISSION SHOULD BE STRONGLY FOCUSED ON THE DUAL PURPOSE OF IMPROVING THE FISHING AND FISHERIES ON OUR BORDER LAKES AND STREAMS AND ENCOURAGING DEVELOPMENT OF OUR TOURISM INDUSTRY. I ALSO BELIEVE THAT THE WORK OF THE COMMISSION AND ITS REPORT SHOULD BE COMPLETED WITHIN ONE YEAR. FIVE YEARS IS TOO LONG TO WAIT FOR PEOPLE WHO ARE ALREADY REELING FROM ECONOMIC PROBLEMS THAT HAVE NOT LET UP.

MUCH OF THE FISHERY INFORMATION LISTED IN THE DRAFT HAS ALREADY BEEN COMPILED BY THE STATE OF MINNESOTA AND THE PROVINCE OF ONTARIO. ALTHOUGH I SUPPORT FEDERAL FUNDS TO IMPROVE FISHING, I BELIEVE THAT THE STATE OF MINNESOTA SHOULD RETAIN JURISDICTION OVER FISHING RIGHTS AND MANAGEMENT IN MINNESOTA WATERS.

WHERE WE DO NEED HELP--AND WHERE I BELIEVE THIS JOINT COMMISSION COULD BE OF USE--IS IN THE DELICATE AREA OF INTERNATIONAL RELATIONS. THE STATE AND THE PROVINCE HAVE THE KNOWLEDGE AND ABILITY TO SET MANAGEMENT POLICY TO PROTECT AND MAINTAIN OUR FISH RESOURCE. WHAT WE LACK IS EXPERTISE IN FASHIONING MUTUALLY BENEFICIAL INTERNATIONAL AGREEMENTS IN THOSE AREAS WHERE ECONOMIC INTERESTS AND PROTECTIONIST MEASURES CLOUD JUDGMENTS AND KEEP US STALEMATED.

IN THE AREA OF LAND MANAGEMENT ALONG THE BORDER WATERS, I BELIEVE THAT ANY COMMISSION ESTABLISHED SHOULD PUT GREATER EMPHASIS ON IMPROVING THE ECONOMY OF THE AREA AND IN PURSUING A MORE UNIFORM MANAGEMENT POLICY THAT UPHOLDS THE INTERNATIONAL TREATY-GUARANTEED RIGHTS OF CITIZENS FROM BOTH COUNTRIES TO FREELY AND OPENLY USE THESE INTERNATIONAL WATERS.

IT IS CLEAR TO ME THAT THE STATE OF MINNESOTA CANNOT, BY ITSELF, RESOLVE THE PROBLEMS THAT EXIST ALONG OUR BORDER. AND, I HAVE RESERVATIONS THAT THE ESTABLISHMENT OF A BORDER COMMISSION COULD DELAY EFFORTS TO WORK OUT A SATISFACTORY SOLUTION TO THE PROBLEMS CREATED BY THE MANAGEMENT PLANS ALREADY IN PLACE IN MINNESOTA AND ONTARIO. IF IT COULD BE HELD TO A ONE-YEAR TIMETABLE, IT PROBABLY COULD BE BENEFICIAL TO HAVE A JOINT COMMISSION STUDY THE PROBLEMS THAT HAVE RESULTED FROM INCONSISTENT AND UNDULY RESTRICTIVE MANAGEMENT POLICIES. HOWEVER, I BELIEVE THAT MORE IMMEDIATE STEPS COULD BE TAKEN.

I WOULD LIKE TO CALL ON THE MINNESOTA CONGRESSIONAL DELEGATION TO: 1) GET THE FEDERAL GOVERNMENT INVOLVED, 2) MEET WITH CANADIAN OFFICIALS TO ADDRESS THE PROBLEMS IN OUR BORDER COMMUNITIES CAUSED BY INCONSISTENT MANAGEMENT POLICIES, AND, 3) MOST IMPORTANTLY, GET THE STATE DEPARTMENT TO PROVIDE THE HELP WE NEED TO ENSURE THAT THE RIGHTS GUARANTEED BY INTERNATIONAL TREATIES ARE AVAILABLE TO ALL OUR CITIZENS.

Senator DURENBERGER. All right. Let us proceed with our first witness, Mr. Beasley, from the Forest Service.

TESTIMONY OF J. LAMAR BEASLEY, DEPUTY CHIEF, U.S. FOREST SERVICE, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY CLAY BEAL, FOREST SUPERVISOR, SUPERIOR NATIONAL FOREST; CARROLL BROWN, DIRECTOR, OFFICE OF CANADIAN AFFAIRS, DEPARTMENT OF STATE; AND RUSS BERRY, SUPERINTENDENT, VOYAGEURS NATIONAL PARK

Mr. BEASLEY. Mr. Chairman, I appreciate having the opportunity to present the Department of Agriculture's views on the establishment of a Boundary Waters International Commission. I'm accompanied today by Forest Supervisor Clay Beal from the Superior National Forest. I might also mention that it is a great pleasure to be back in the State of Minnesota, having served as District Ranger on the Blackduck Ranger District in the Chippewa National Forest at one time.

Because of the international implications of the proposed joint commission, we think that this is best addressed by the Department of State, and, therefore, we defer to them on a position on the commission. However, I would like to share with you some of the implications that such a commission could have on the Forest Service.

I will limit my comments to background information on the National Forest System lands that would be involved in the border area and the statutes and direction that affect planning and management of these lands.

We do understand that part of the reason for proposing the commission is to develop a means for the two governments to address, in a coordinated manner, issues such as wildlife and fisheries management and land uses. With respect to wildlife concerns, the Forest Service is responsible for management of the wildlife and fish habitats. Individual States are responsible for management of the wildlife and fisheries populations, including their regulation within the National Forests. Therefore, we would defer to the State of Minnesota on the issues related to fishing and hunting regulations, but we do welcome any discussion and questions regarding habitat management.

The northern boundary of the Superior National Forest comprises approximately 150 miles of the border between the State of Minnesota and the Province of Ontario. The National Forest is managed in accordance with many laws and regulations. Of these, of particular relevance to the issues being discussed here today are the Wilderness Act of 1964, the Boundary Waters Canoe Area Wilderness Act of 1978, the National Environmental Policy Act of 1969, and the National Forest Management Act of 1976.

Our recommendations pertain to the current land management planning activity which is under way on the Superior National Forest which is required by the National Forest Management Act. This act requires an integrated management plan for each administrative unit of the National Forest System. There are provisions in the act for both revising the plans and amending them. The revisions are to be made every 10 to 15 years.

The National Forest Management Act also requires the use of an interdisciplinary approach to planning and public participation and interagency coordination. This process provides an opportunity for many people, both internal and external to the Forest Service, to provide input prior to the time that a decision is made on the Forest Plan. It also specifically requires that plans be developed in coordination and cooperation with State and local governments.

For the Superior National Forest, coordination has taken place, including other Federal, State, and local governmental agencies and the Ontario Ministry of Natural Resources. Also, the public has been involved. The planning effort has produced a draft environmental impact statement and a draft forest plan. That forest plan and environmental impact statement have been reviewed for 90 days and public comments have been received. The public commenting period ended in December 1984, and we have been analyzing and considering the input that we received. It is our intent to publish the final plan and the final EIS this fall. We will then proceed with implementation and further monitoring of that implementation of the plan.

The forest plan includes management direction that addresses resource issues identified by the public and other agencies, existing laws pertaining to national forests, including the requirements of the Boundary Waters Canoe Area Wilderness Act and its subsequent implementation plan, and consideration of comments received from the public and other governmental agencies.

The development of this plan has required a major investment and commitment of time, energy, and dollars not only by the Forest Service, but by all of those who have participated with us.

We feel that additional requirements for land management planning affecting National Forest System lands could result in a duplicative effort. It could be very costly, and it could lead to some confusion to the public.

Therefore, we recommend that the BWCA issues not be reopened and that emphasis be placed on the implementation of the forest plan to be released this fall. We would be very cooperative in our efforts to work with the public in trying to resolve specific areas of concern. And as I mentioned earlier, these could be reflected either in some revision of the plan or an amendment to the plan.

We are willing to work with your subcommittee to describe more fully the Superior National Forest Plan or in any way that might be helpful as you try to resolve the management issues in this area.

Mr. Chairman, this concludes my prepared comments. I would be happy to respond to any questions.

Senator DURENBERGER. OK. Thank you very much, Mr. Beasley.

Mr. Brown.

Mr. BROWN. Senator Durenberger, I would like to thank you for this opportunity to comment on your draft legislation to establish a new joint commission to deal with the fisheries and land management issues along the border.

Before turning to that specific subject though, let me say a few words about the present state of the United States-Canadian relationship. In a nutshell, bilateral ties today are about as good as they have been since World War II. This situation is all the more

remarkable given the tense circumstances of only 3 to 4 years ago, when we were dealing with some serious differences on trade and investment policies, international security, and fisheries, among others. I will not go into the reasons for the improvement that has taken place since then, except to say that there have been some basic changes both within Canada and the United States which have created a new climate of friendship and cooperation between our two sovereign countries.

This is not to say that conditions are ideal or that all of our problems have been solved. If that were true, we wouldn't be here today. The fact is, though, that 5,000 miles of unguarded border, which both Canadians and Americans so often extol, will inevitably produce frictions and differences between our two nations. The Senator has already mentioned acid rain. There are others. There are logs. There is the Coast Guard icebreaker that went through the Northwest Passage a couple weeks ago that created a furor in Canada, but fundamentally, ties right now are quite positive and quite good, and they were given a new boost by President Reagan's trip to Quebec City in March of this year.

There is another important factor in our two countries' dealings with each other. Perhaps in no other bilateral relationship on Earth are State and local interests so closely entwined with national interests. While it is true that the Federal Governments in Washington and Ottawa are responsible for the conduct of our respective countries' foreign policies, we cannot ignore the concerns of State and provincial political entities, particularly along the border. Thus, it is especially important that we in Washington cooperate closely with you at the local level to deal with Canada-related problems affecting your interests.

In the State Department, we believe we have a good working relationship with the State of Minnesota and with its congressional delegation, with whom we have been in regular contact. I cite the example of the Canadian requirement that fishing guides obtain work permits as illustrative of a joint collaboration which resolved the problem to the satisfaction of both the Americans and Canadians.

The user fee issue is another example which, although not solved, has entailed intensive discussions and joint efforts on the part of the State Department with Senators Durenberger and Boschwitz and with Representatives Stangeland and Oberstar. At the request of these members of Congress, as the Senator alluded to earlier, Secretary Shultz raised the user fee issue with his Canadian counterpart at a meeting earlier this year. This high level intervention unfortunately did not get the response we wanted, but our northern neighbors are aware of your views and of the importance we attach to finding solutions to this and other boundary water problems.

As you know, there has been a recent change of government in Ontario. Our Consul General in Toronto has already raised earlier this week a number of border water issues; particularly the user fee question, with the Minister of Natural Resources.

Consul General Blevins will, in addition, talk in early September with Premier Peterson, and we are prepared to recommend that our new Ambassador to Canada involve himself in these issues.

We understand exchanges have also taken place recently between the State of Minnesota and the Province of Ontario about this problem. In the nature of the Canadian political system, there are limits to what the Federal Government in Ottawa can do in managing an issue of this type. We, therefore, believe that Washington and Minnesota should continue to work in tandem in dealing with both Ottawa and Toronto.

Senator DURENBERGER. Carroll, that is an Ontario fly that is going around your head.

Mr. BROWN. I guessed as much.

Senator DURENBERGER. It is sort of like the Russians used as dust on the spys. Keep going. I'm sorry.

Mr. BROWN. One other point on Ontario's user fee. I recognize that many believe that this fee violates the 1909 Boundary Waters Treaty. Our legal experts have gone over the language of that treaty very carefully and have concluded that the fee is not a regulation primarily affecting navigation. It does not, therefore, fall squarely within the language of the 1909 Treaty. By its discriminatory nature, though, the fee certainly can be termed inconsistent with the spirit of the Treaty, which contemplates that regulations will be imposed in a non-discriminatory fashion. This has been a key element of our complaint to the Canadian authorities concerning the inequitable and inappropriate nature of the fee as a resource management mechanism.

With regard to the proposal to establish new institutional arrangements to deal with these border lake problems, the Department of State fully supports the goal of coordinated planning that the proposal seeks. We also recognize the need for a better structure to guide and advance transboundary discussions. However, we believe direct talks between Minnesota and Ontario, with the two Federal Governments involved as necessary, should be continued and expanded before any decision is reached as to the utility or necessity of new institutions.

If reasonable efforts show that this approach is not yielding results, the State Department would support the formation of some sort of new consultative mechanism. But the first step in doing so would have to be an agreement on the part of the Canadian Government to cooperate. Unilateral legislation itself cannot bring the Canadians to the table. Such legislation is, in fact, unlikely to be needed to implement a new mechanism unless experience over time demonstrates that a permanent body is truly called for. In the meantime, any legislation, in our view, should be recommendatory, not obligatory. Let me note parenthetically that the decision to conclude an agreement of the type being discussed is an executive branch prerogative.

With respect to the specific entity envisaged in the proposed bill, we believe the body is more formal than necessary and would probably not elicit the kind of cooperation we need from the Canadians. At this stage, in our judgment, a cooperative framework less structured than the one suggested would be more likely to gain acceptance to both the Federal and provincial authorities in Canada. A consultative body providing for frequent or regularly scheduled discussions, with additional meetings called on an as-needed basis, could be set up by the simple exchange of letters or diplomatic

notes, without cost and without need for implementing legislation at this time.

We think formation of such a group could provide a useful forum for review and possible resolution of these difficult and complex boundary issues which have become an irritant in our otherwise good bilateral ties with our Canadian neighbors.

Again, though, we recommend an intensification of the direct dialog between Minnesota and the new government in Toronto. The results of these hearings here in International Falls will be helpful in developing further the factual basis in the argumentation necessary to support such a dialog and to persuade the Ontario authorities to move in the right direction.

Meanwhile, I can assure you that the State Department, from Secretary Shultz on down, is ready to work with Minnesotans to deal with these problems and to take every appropriate opportunity to urge our Canadian friends to talk constructively with us. Thank you very much.

Senator DURENBERGER. Thank you very much for your testimony. Russ, you have an advantage over these two gentlemen, as you see these flies every day, so——

Mr. BERRY. We protect them, Senator.

Mr. Chairman, it is a pleasure to have the opportunity to speak today on the issue that is at hand and that is of interest to all of us. I am representing the National Park Service in my capacity as Superintendent of the Voyageurs National Park.

Voyageurs National Park shares a 52-mile international boundary with the Canadian province of Ontario. The National Park Service has in the 10 years since the park's establishment come to recognize the difficulties and the opportunities of developing and managing a national park where an international boundary lies down the center of the park's major lakes. Managing national parks on an international boundary is a familiar role for the National Park Service, with Glacier National Park on the Canadian border, and Big Bend National Park, where I served 3 years prior to this assignment, sharing a 110-mile common boundary with the Republic of Mexico.

Management of our border resources is a challenging task. It is a task that requires close coordination and cooperation with our Canadian neighbors, as well as the Federal, State, and local agencies on this side of the border.

That cooperative spirit does exist in some areas of management of our resources, but not in others. The International Joint Commission's Rainy Lake Board of Control works well with joint membership. The Forest Service, the National Park Service, the Minnesota Department of Natural Resources, and the Ontario Ministry of Natural Resources actively cooperate in forest fire suppression. There are other areas, such as fisheries management, where a joint effort could be improved. However, with regard to the proposed legislation providing for the creation of a joint commission to develop and recommend a management plan for border resources, the National Park Service defers to the views of the Department of State.

Mr. Chairman, I had the opportunity to review a copy of Mr. Donald Parmeter's assessment of United States-Canadian issues along the Minnesota-Ontario border. Of the 15 major issues, the as-

sessment identified five which deal directly with Voyageurs National Park or the National Park Service, and a sixth, camping fees imposed by the Ontario Ministry of Natural Resources is having a significant impact on park waters.

Mr. Parmeter's report, while an excellent summation of present issues, gives less than adequate emphasis to an underlying cause common to the issues, that being the Federal land management agencies' legislative mandate to manage and preserve these lands from a national interest perspective. This mandate may be at local odds with local needs which are, in Mr. Parmeter's words, "to support a tourism and recreation industry and to contribute significantly to the lifestyle values of residents on both sides of the border." We understand these concerns. This statement refers primarily to local interests rather than national values of conversation and preservation of the resources of the area, which we are required by law to consider in our management. The fact that these issues are being dealt with on an international border further complicates an already complex task.

The National Park Service in Voyageurs National Park has demonstrated its interest in cooperative management through joint planning and research and through cooperative agreement with other agencies. We seek and need close cooperation with our Canadian counterparts, as well as the Federal, State, and local agencies on this side of the border.

We would look forward to working with all interested parties to resolve these problems and turn them, through cooperation, into opportunities.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to answer any questions you may have. Thank you.

Senator DURENBERGER. OK. Thank you all very much for your statements.

Mr. Beasley, you mentioned that you worked with Ontario in developing a management plan for forestry resources. Would you elaborate on the mechanisms that are in place for this cooperative management. Is it done under some kind of a legal agreement? What kind of resources does it cover? How do you—what happens when you reach differing or conflicting conclusions?

Mr. BEASLEY. Mr. Chairman, we have a long-standing procedure for working jointly and closely with the Province. If you look at what mechanism really would require this, there is no specific statute that says you will do this, but in accordance with the National Forest Management Act, we are directed to work very closely with other agencies, other Federal agencies and State agencies as well as in the case here, the Province, in developing the Forest Plan for the Superior National Forest.

In addition to that, for many years we have had meetings, annual coordination meetings with the provincial agencies to discuss primarily fire, recreation and wildlife type issues. We meet annually to discuss these issues and try and work out a coordinated approach for their management.

We do have a formal agreement with the Canadian Government regarding fire. I believe there are three levels of that agreement. It is somewhat more formalized than the coordination concerning other land uses with the Province.

When we reach an impasse, of course, there is no mechanism that says, "OK. You go to arbitration and some person will eventually decide which way you will go." We attempt to negotiate this out through good faith effort, but, ultimately, the responsible agency, whether it be from the Canadian side or the U.S. side—in our case, the Forest Service—ultimately has to make that decision, and hopefully we don't have so many cases where we do this that we are completely at odds. It is our attempt to try and compromise, reach an agreement through compromise, keeping in mind the impacts on the general using public.

Senator DURENBERGER. Do you have in mind an example of a decision that you had to take on your side or we had to take on our side unilaterally because something could not be worked out with the Canadians where there was an obvious conflict with them?

Mr. BEASLEY. There are probably some examples where this is the case where, by statute, we were required to take an action which differed from the action or the desires of the provincial government. One that immediately comes to mind is the motorized use where, by statute, we were directed and required to develop some prohibitions; whereas, on the Canadian side they were not. I cannot recall where we have had to take a completely opposite position where we had some latitude to negotiate.

Senator DURENBERGER. How about the reverse of that. Is there any example or potential example of decisions that will be taken by the provincial government that might present a conflict with uses on this side of the border?

Mr. BEASLEY. I'm not completely familiar with the user fee issue, but that could be one example, I suspect. I don't have in mind a specific example of where there have been cases. The Forest Supervisor might be able to respond more specifically to that.

Senator DURENBERGER. Now, you began your statement by saying that a lot of these international things you leave to the Department of State to resolve, and Mr. Brown is here to represent the Department of State, and they obviously are all the people that we turn to. And when Jim Oberstar came in and sat down when Mr. Brown was testifying, he said, "Now, that fellow really knows what he is talking about." So, obviously, we have somebody here from the Department of State that, according to Jim, knows what he is talking about, and yet, by his testimony, we have some indication that some problems get solved and a lot of problems are sort of still hanging fire. And I'm trying, Mr. Brown, to get your advice here about the direction that we ought to move when the State Department on behalf of the U.S. Government is not able to resolve conflicts, and I'm caught here today without having one of our chief spokespersons for Minnesota, the Commissioner of the Department of Natural Resources, who has chosen to send up a statement, but probably because of the weather couldn't get here. But his statement says that, "We don't need new layers of government that inevitably divert taxpayers' money to unnecessary tasks, create additional bureaucratic procedures that inevitably bring delay and drain power from where it belongs; that is, closest to the people." That is his characterization of our proposed legislation, that it drains power from the people and creates bureaucratic procedures.

What he says we really need is we need to turn this problem over to the Department of State.

Now, with all due respect to the proximity between the Department of State and the people of this country—and I just quote again. I'm not putting you on the spot. I have got myself on the spot. The Commissioner of the DNR here in Minnesota, on behalf of the State of Minnesota, says in his testimony:

> What we do need in order to resolve international problems relating to game fish harvesting in these waters is the sympathetic backing of the Federal Government, particularly the State Department, with all its skills in international negotiation and its ready access to the Canadian Government. We need their help not to identify fish populations or devise fish management programs, but to assist us in searching out satisfactory alternative solutions to the problems at hand and to bring these solutions skillfully and forcefully to the attention of persons who possess the power to make and influence decisions in Canada and its provinces.

Now, he concludes by saying that—and this is hard to believe—neither he nor Governor Perpich wield that kind of power or influence.

But in your testimony, you suggested to us that first we need some more direct talks between Minnesota and Ontario. And so the record of this hearing will be left somewhat in doubt for those of us who are sort of trapped in between the State government, which says, "We don't have any power. We need the State Department's—the Federal help," and the State Department which says—and I sort of think logically—that first we need some direct talks between Minnesota and Ontario, and at some point, if they say they need the State Department to help with this or that, then the State Department gets involved. What—maybe you can just explain to all of us how in the world this works in terms of the involvement of the State Department in resolving these kinds of issues.

Mr. BROWN. Well, as I said in my prepared remarks, Senator, I think dealing with Canada-United States problems necessitates a very close working relationship between State and local governments on both sides of the border with the Federal Government. I think that is absolutely essential. And given the extent and breadth of our relationship with Canada, I think it is even more important.

Now, several months ago, several members of your congressional delegation organized a rather unique bit of diplomacy. Some orthodox diplomats probably wouldn't think this was the way to go about it, but I thought it was a pretty good device. They called a number of representatives of the legislative branch of our Government with the executive branch of our Government and with counterparts from the Canadian Government together for a full day of discussions on this user fee issue. It didn't solve the problem, but at least, I think, it cleared the air of a lot of misunderstandings and created a better atmosphere to address this problem which we now can capitalize on.

There is a couple of other things in this case that have happened in the last few months that I think should be taken into account before we go to a formal new mechanism. As I said, we have a new government in Ontario. We also have a new—relatively new government in Ottawa. We are in very close contact with both. For

people whose problems have not been solved, maybe they don't see that we have made much progress, but we have cleared up a number of bilateral issues that have been around for a long, long time. And I think we ought to take advantage of the new political atmosphere between our two countries, new governments in Canada, and play that out a little bit longer. If it doesn't work, then turn to some kind of more formal mechanism. And one of the points I was trying to make here is that I'm not sure we need a law to create a new body. If we decide to go that route, we can set it up simply through an exchange of diplomatic notes or some other informal way. We can have meetings, we can try to address these issues, but I'm not sure we are at that point yet. I think we ought to keep doing what we are doing right now somewhat longer.

Senator DURENBERGER. OK. I just want to say I'm going to hand this over to Jim for his questions, but I have been there for 6½ years now, and we have had these problems for those 6½ years. And again, this isn't said critically of the Department of State. If I were sitting out there and I had been at this for longer than 6½ years on some of these issues, I guess I wouldn't agree with the conclusion that says maybe we have to wait a little longer before we put some kind of a mechanism in place, and I don't think at least in the bill that I have drafted that it was intended that this mechanism be a substitute for negotiations. Certainly it wasn't a substitute for the State of Minnesota and the Province of Ontario working together for agencies like the Forest Service and counterparts working these things out before it gets to that level. And it wasn't intended as a substitute for the value of negotiation. If any of us call Allen Gotlieb, the Canadian Ambassador in the office, and get the right kind of pressure on the right kind of issue—we are working on the Baudette Airport right now, as sort of an example—hopefully we will create a little piece of Canada over in Baudette so that they come back with their customs officials again. But if you can put the right pressure in the right place on some issues, it seems to work. But there is a series of issues here that relate—maybe they have an economic base. Maybe that's one of the things that is common to them.

There is a series of issues that relate to the resources in Lake of the Woods and Rainy Lake and Rainy River and so forth in which Ontario just doesn't budge, period. No matter how much talking we do, they are going in the other direction. This thing at the Baudette Airport was no accident. I mean, look at the timing, they wait until they get $2.5 million put in their airport, then they decide that their customs officials—they can't afford to have their customs official come across the border. I mean, that was no accident. And so I guess the part of the frustration here is that some issues we can agree that you ought to leave it to negotiation and they are always very appropriate, but there seems to be some set of issues here that are resource based, that are economic in nature, that just aren't going to get resolved by negotiation. And that is why this notion of a intermediary mediating mechanism, something that everybody can get to—you don't have to go to Washington to get to it—it seemed to us, at least, to be an appropriate mechanism. I will let Jim——

OPENING STATEMENT OF CONGRESSMAN JAMES L. OBERSTAR

Congressman OBERSTAR. Thank you, Senator. I will have more extensive comments later, but first I would like to explore just one aspect of this international negotiation process.

Under the Root-Bryce Treaty of 1909, the so-called Boundary Waters Treaty, there are two provisions that allow for a resolution of international disputes. Under article IX, there can be a reference to the IJC, the International Joint Commission, for a matter on which there is a dispute between the United States and Canada in which no binding solution may be reached, but a recommendation can be made by the IJC.

Under article X, there is a provision for a binding agreement, a binding resolution, but that resolution must be referred by the IJC to each government. In the United States, that recommendation must be approved by the President and then must receive the advice and consent of the Senate, which means that it has to, in effect, be ratified by the Senate. No such reference has been made under article X in the near 76 years of that treaty.

There is another mechanism that offers some guidance, and that is the fishing agreement between the United States and Canada, the so-called GIFA's, the Governing International Fisheries Agreement. There is a board and there is a very extensive arrangement of management experts pulled together from the States and the affected Canadian provinces.

I would like to have your reaction to how disputes that have arisen under the fisheries agreement have been resolved within the context of the 200-mile limit law that established the Governing International Fisheries Agreement, and in that is an instructive means for the United States-Canadian border disputes involving water and fisheries?

Mr. BROWN. I think the record would show that the results are rather mixed on that second device you had described, the GIFA there. Some problems have been resolved, some not, and I'm not that much of an expert on the history of this.

As far as the possibility of using such a device to deal with this issue, I don't know, at least in my watch, that anyone has suggested this. And there is no reason why we couldn't take a look at it.

Congressman OBERSTAR. Thank you. That's the only question I had.

Senator DURENBERGER. Thank you, gentlemen, very much. I appreciate your testimony.

[The prepared statements of Messrs. Beasley, Brown, and Berry follow:]

PREPARED STATEMENT OF J. LAMAR BEASLEY

Mr. Chairman and members of the subcommittee; thank you for the opportunity to present the Department of Agriculture's views on the establishment of a Boundary Waters International Commission. Because of the international implications of the proposal for a joint commission, it is best addressed by the Department of State. We defer to them for a position on the commission. However, we do wish to comment on the implications that such a commission would have on the Forest Service.

My comments will be limited to background information on the National Forest System lands that would be involved in the border area and the statute and direction that affect planning and management of those lands.

We understand that part of the reason for proposing a commission is to develop a means for the two governments to address, in a coordinated manner, issues such as wildlife and fisheries management. With respect to wildlife concerns, the Forest Service is responsible for management of the wildlife and fish habitats. Individual States are responsible for management of the wildlife and fisheries populations including their regulation within the National Forests. We defer to the State of Minnesota on issues relating to fishing and hunting regulations but we would welcome any questions regarding habitat management.

The northern boundary of the Superior National Forest comprises approximately 150 miles of the border between the State of Minnesota and the Province of Ontario. This Forest is managed in accordance with the laws and regulations that pertain to the National Forest System. Of these, the Wilderness Act of 1964, the Boundary Waters Canoe Area Wilderness Act of 1978, the National Evironmental Policy Act of 1969 (NEPA), the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), and the National Forest Management Act of 1976 (NFMA) have particular relevance to the subject of this hearing. Our recommendations to you about coordinated land management planning in the border area of the Superior National Forest are based on the existing resource planning coordination requirements in NFMA. For that reason, I will provide a brief overview of that Act.

The National Forest Management Act mandated that each administrative unit of the National Forest System have an integrated Management Plan. These plans are to provide specific direction for managing National Forest System lands. These plans are to be revised at a 10–15 year interval.

The National Forest Management Act requires the use of an interdisciplinary approach to planning with public participation and interagency coordination. The purpose of planning is to ensure that the necessary knowledge, information, expertise, and view points are available to enable sound management decisions to be made in a systematic and formalized manner. It affords the opportunity for many people, both internal and external to the Forest Service, to provide input prior to the time a decision is made. It also specifically requires that plans be developed in coordination and cooperation with State and local governments.

Individuals, groups, and agencies were encouraged to participate throughout the forest planning process on the Superior National Forest beginning with identification of issues and continuing with each subsequent step. This included other Federal, State and local government agencies and the Ontario Ministry of Natural Resources. The planning effort produced a Draft Environmental Impact Statement (EIS) and Forest Plan that had a 90-day public review period as required by NEPA. This public review period began in December 1984. Public comments are now being analyzed and considered as the Final Environmental Impact Statement and Forest Plan are developed. This Plan and Final EIS will be completed and available to the public this fall and then implemented and monitored.

We believe our Forest Plan and the process which produced it, both mandated by Congress, are the appropriate means of guiding land management on the Superior National Forest. The Forest Plan includes management direction that addresses resource issues identified by the public and other agencies, existing laws pertaining to the National Forests including the requirements of the Boundary Waters Canoe Area Wilderness Act and its subsequent implementation plan, and consideration of comments received from the public and other government agencies. Development of this plan has required a major investment and commitment of time, energy, and dollars by not only the Forest Service but also the public and other agencies. Any additional requirement for land management planning for National Forest System lands would be duplicative, costly, and confusing to the public.

We would be willing to work with the Subcommittee to describe more fully the Superior National Forest Plan, or in any other way that would be helpful as you try to resolve the resource management issues in this area.

This concludes my prepared comments. I would be happy to answer any questions you might have.

Prepared Statement of Carroll Brown

I would like to thank Senator Durenberger for this opportunity to comment on draft legislation to establish a joint commission to design a fisheries and land management plan for the Minnesota-Ontario border.

Before turning to the specific proposal at hand, let me say a few words about the present health of US-Canada relations. In a nutshell, bilateral ties today are as good as they have been in many years, perhaps even since WW II. This state of affairs is

all the more remarkable given the tense circumstances of only 3 to 4 years ago, when we were dealing with some serious differences on trade and investment policies, international security, and fisheries, among others. I will not go into the reasons for the improvement since then, except to say that important changes in both Canada and the US have created a new climate of friendship and cooperation.

This is not to say that conditions are ideal or that all our problems have been solved. If that were true, we would not be here today. The fact is, that 5,000 miles of unguarded border, which both Americans and Canadians so often extol, will inevitably produce friction and differences between our two sovereign nations. But I think it is important to examine the issues we are now discussing against this broader backdrop of US-Canada ties.

There is another important factor in our two countries' dealings with each other. Perhaps in no other bilateral relationship are state and local interests so closely entwined with national interests. While it is true that the federal governments in Washington and Ottawa are responsible for the conduct of our respective countries' foreign policies, we cannot ignore the concerns of state and provincial political entities, particularly along the border. Thus it is especially important that we in Washington cooperate closely with you at the local level to deal with Canada-related problems affecting your interests. In the State Department we believe we have a good working relationship with the State of Minnesota and with its Congressional delegation, with whom we have been in regular contact. I cite the example of the Canadian requirement that fishing guides obtain work permits as illustrative of a joint collaboration which resolved a problem to the satisfaction of both Americans and Canadians. The user fees issue is another example which, although not solved, has entailed intensive discussions and joint efforts on the part of the State Department with Senators Durenberger and Boschwitz and with Representatives Stangeland and Oberstar. At the request of these members of Congress, Secretary Shultz raised the user fee issue with his Canadian counterpart at a meeting earlier this year. This high level intervention unfortunately did not elicit the response we wanted, but our northern neighbors are aware of your views and of the importance we attach to finding solutions to this and other boundary water problems.

As you know, there has been a recent change of government in Ontario. Our Consul General in Toronto has already raised, earlier this week, the user fee question with the Minister of Natural Resources. Consul General Blevins will, in addition, talk in early September with Premier Peterson, and we are prepared to recommend that our new Ambassador to Canada involve himself. We understand exchanges have also taken place between the State of Minnesota and the Province of Ontario about this problem. In the nature of the Canadian political system, there are limits to what the Federal Government in Ottawa can do in managing an issue of this type. We therefore believe that Washington and Minnesota should continue to work in tandem in dealing with both Ottawa and Toronto.

One other point on Ontario's user fee: I recognize that many believe that this fee violates the 1909 Boundary Waters Treaty. Our legal experts have gone over the language of that Treaty very carefully and have concluded that the fee is not a regulation primarily affecting navigation. It does not, therefore, fall squarely within the language of the 1909 Treaty. By its discriminatory nature, though, the fee certainly can be termed inconsistent with the spirit of the Treaty, which contemplates that regulations will be imposed in a non-discriminatory fashion. This has been a key element of our complaint to the Canadian authorities concerning the inequitable and inappropriate nature of the fee as a resource management mechanism.

With regard to the proposal to establish new institutional arrangements to deal with these border lake problems, the Department fully supports the goal of coordinated planning that the proposal seeks. We also recognize the need for a better structure to guide and advance transboundary discussions. However, we believe direct talks involving Minnesota and Ontario, with the two federal governments involved as desirable, should be continued and expanded before any decision is reached as to the utility or necessity of new institutions. If reasonable efforts show this approach is not yielding results, the State Department would support the formation of some sort of new consultative mechanism. But the first step in doing so must be reaching agreement with the Canadian Government. Unilateral legislation cannot itself bring the Canadians to the table and is, in fact, unlikely to be needed to implement an agreed-upon mechanism unless experience over time demonstrates that a permanent body is truly called for. In the meantime, any legislation would have to be seen as recommendatory, not obligatory. (Let me note parenthetically that the decision to conclude an arrangement of the type being discussed is an Executive Branch prerogative.)

With respect to the specific entity envisaged in the proposed legislation, we believe the body is more formal than necessary and would probably not elicit the kind of cooperation we need from the Canadian Government. At this stage, a cooperative framework, less structured than the one suggested, would be more likely to gain acceptance of both the federal and provincial authorities in Canada. A consultative mechanism providing for frequent or regularly scheduled discussions, with additional meetings called on an as-needed basis, could be set up by a simple exchange of letters or diplomatic notes, without cost and without need for implementing legislation at this time. We think formation of such a body could provide a useful forum for discussion and possible resolution of these difficult and complex boundary issues which have become an irritant in our otherwise good bilateral relations with our Canadian neighbors. Again, though, we recommend an intensification of the direct dialogue between Minnesota and the new government in Toronto. The results of these hearings here in International Falls will be helpful in developing further the factual basis and the argumentation necessary to support such a dialogue and to persuade the Ontario authorities to move in the right direction. Meanwhile, I can assure you that the State Department—from Secretary Shultz on down—still stands ready to work with Minnesotans to deal with these problems and to take every appropriate opportunity to urge our Canadian friends to talk constructively with us. Thank you for your time.

PREPARED STATEMENT OF RUSSELL W. BERRY, JR.

Dear Mr. Chairman, my name is Russell W. Berry, Jr. I am representing the National Park Service in my capacity as Superintendent of Voyageurs National Park.

Voyageurs National Park shares a 52-mile international boundary with the Canadian province of Ontario. The National Park Service has in the 10 years since the park's establishment come to recognize the difficulties and the opportunities of developing and managing a national park where an international boundary lies down the center of the park's major lakes. Managing national parks on an international boundary is a familiar role for the National Park Service, with Glacier National Park on the Canadian border, and Big Bend National Park, where I served 3 years prior to this assignment, sharing a 110-mile common boundary with Mexico.

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counterparts as well as with the Federal, State, and local agencies on this side of the border.

We would look foward to working with all interested parties to resolve these problems and turn them through cooperation, into opportunities.

This concludes my prepared remarks. I will be pleased to answer any questions you may have.

Senator DURENBERGER. Our next witness will be the Congressman from the Eighth District, who is certainly familiar with all of these issues. He goes way back to long before he earned the right to represent the people of the Eighth District in the Congress of the United States. And I recall back in the late sixties working with Jim Oberstar on a variety of issues when I was in the Governor's office with Harold Levander, and I came then to learn a great deal of respect for his sensitivities and for his abilities. And, Jim, we appreciate very much your involvement on all of these issues for such a long period of time and look forward to your testimony.

TESTIMONY OF HON. JAMES L. OBERSTAR, A U.S. CONGRESSMAN FROM THE STATE OF MINNESOTA

Congressman OBERSTAR. Thank you very much, Senator, and thank you for bringing your committee and this hearing to International Falls, even though this issue affects a much broader geographical area. I'm very appreciative of the forum which you have offered here for discussion and national perspective airing of this issue. It is one that—may I return the compliment—to which you, too, have devoted a great deal of time, effort and initiative, and to which Senator Rudy Boschwitz and my colleague in the House, Arlan Stangeland, also have devoted a great deal of time, energy, and effort. All with a certain amount of frustration, which is why we come to the point of this hearing and your proposal and that of Congressman Stangeland.

Few settings are as appropriate as this in International Falls to discuss an issue of this kind, because few areas reflect the interdependence of United States and Canadian economies as accurately as the International Falls-Fort Frances area, whether in wood fiber industries or in tourism and fisheries.

We certainly have a very kaleidoscopic view in International Falls of the 76 years of cooperation between the United States and Canada under the Root-Bryce Treaty, and also a very close-up view of the frustrations and the difficulties of international border cooperation.

The roots of this particular problem—the day user fees go back farther than this year. They go back to at least 1981, when the Canadian Federal Government proposed to—or announced that it proposed to close the customs station at Prairie Portage and the one at Cabin 16 or the Ottawa entry on Basswood Lake.

Senator, you will recall our two offices were contacted by Ely outfitters, resorters, and individual citizens who were outraged at this closing and the negative economic impact it would have upon Ely area tourism and development and upon individual citizens who simply wanted to cross over into Canadian waters to fish.

We had numerous meetings with Canadian Embassy officials resulted in an order from the Federal Government to keep the custom stations open. The issue didn't go away. That fall there

were further rumblings from Canada that this was only a temporary decision; that, in fact, the issue would be revisited, and because of costs, very likely those two custom stations would again be closed. Again, a round of meetings, a round of discussions. I went to Canada on an energy exchange with Canadian members of parliament and visited with Canadian Government officials. You and Senator Boschwitz had meetings in Washington; together we met with the Ambassador Gotlieb, and in mid-January the issue was resolved, but only because the United States was simultaneously proposing the closing of border custom stations that would have affected Canadian traffic into the United States. There was an economic balance reached in that we were able to persuade the Canadians that it was in their economic interest to keep those custom stations open.

As a result of that discussion and that exchange, Ely area outfitters, again at our request, jointly developed information showing the amount of business done by United States outfitters in Canada and the amount of goods purchased and services purchased in Canada, showing there was a very significant economic benefit to Canadians. The economic basis for the problem surfaced when, at a hearing here at International Falls then Provincial Legislator Pat Reed said, "Quetico is not operated for the people of Ontario. We have been operating Quetico Park for the benefit of tourist operators in Ely, MN. Ninety-two percent of the park's users are American residents. Who is benefiting economically?" Mr. Reed asked. He further suggested at that hearing that if the southern entry points to the Quetico Park weren't closed, the cost to Americans ought to be increased substantially, and concluded by saying this would be a way to encourage park users to use Atikokan outfitters and businesses.

I would like to quote correspondence that I had with Provincial Parliament Member Pat Reed:

> I find your last paragraph, says that the businessmen on the American side of the border feel that closing the custom stations would be a severe financial burden somewhat ironic. You are no doubt aware that it is the Ely operators who have derived the benefits from Quetico Park rather than the Ontario citizens, who, in fact, own the park. As a member from Rainy River, I have yet to hear any concerns expressed by the Ely businessmen about the fact that there are very few tourist operators on the Ontario side benefiting from Quetico Park.

We then set out to demonstrate that there are benefits on both sides. As a result, we were able to reach a conclusion—a satisfactory conclusion to that issue, and those custom stations have remained in operation—at least one of them satisfactorily.

There was consideration at that time of referring the matter to the International Joint Commission, but, again, after we carefully considered the restrictions and restraints of the IJC and the limited area within which it can operate, the ultimate necessity of a reference to the Premier of Canada and the President of the United States, and ratification by the Senate, we abandoned that approach. We then succeeded through demonstrating to the Canadians that it is in their economic interest to come to an agreement. They want to tighten the screws, there are some screws the United States can tighten as well.

More recently, the issue has surfaced at the provincial level. We had success in dealing with this issue at the Federal level when Federal Government to Federal Government, equal power to equal power and economic influence to economic influence was balanced. Keep in mind that we have an estimated 117 billion in trade between the United States and Canada this year, of which Canada is a $21 billion net beneficiary.

The Canadian partners now want to issue or impose a $3 dollar user fee. I don't question the right of the government of Ontario to impose such fees that it determines necessary to maintain the water resource, the fishery resource, and preserve it for the future. I do however question the purpose. In imposing that fee the provincial government states that this is for the purpose of protecting the fishery resource, when, in fact, given previous statements of member Pat Reed, discussions that Congressman Stangeland and I had in Canada at meetings of the United States-Canadian interparliamentary delegation in May with Canadian members of parliament, this is clearly an economic issue for Canada. It is not a matter of protecting the resource.

People in Ontario are not subject to paying the fees that Americans who cross the border from this side are. Therefore, it makes it more expensive for Americans to fish in Canada if they leave from the United States side from a United States resorter, or from a United States outfitter. The purpose of this fee clearly is to divert traffic from the United States into Canada.

If it were simply a matter of protecting the fishery, that is a matter on which reasonable people can agree. Our Minnesota Department of Natural Resources has cooperated with the Canadian provincial authorities in an extensive study of the walleye fishery resource on Lake of the Woods and on Rainy. That study was presented at the hearing referred to previously which you, Senator Boschwitz, Congressman Stangeland and I organized and held in Washington, and that documentation was adequately presented. It shows that there is relatively no change in the walleye fishery in those lakes under question in those lakes on which Canadian authorities wish to impose this user fee. Frankly, it comes down to a matter of economics. But that is only one matter. There are a number of other irritants along the United States-Canadian border. Fishing license fee, motor use, worker permits, water level regulation, all are items of dispute between the United States and Canada. Over the years, a number of boards have been established by the United States and, in some cases, counterparts in Canada to deal with these problems. There are nineteen regulatory boards, not one has a clear mandate to implement a comprehensive international policy for the borderland—and perhaps none of them should.

In Lac La Croix, for example, no motors are allowed on the U.S. side, but some motors are allowed on certain sides on the Canadian side. There are other disputes of one kind or another that show disparate policies on management of border waters. Before we create the 20th agency, I would suggest that we stop and look at those that we already have established. We already have the Rainy Lake Control Board, the Lake of the Woods Control Board to deal with water pollution and water levels on those two lakes; the National

Park Service with the Voyageurs National Park and regulation of waters on this side; the U.S. Forest Service and the Boundary Waters Canoe Area Wilderness issue; the Environmental Protection Agency with authority for water quality; the Department of Energy and its nuclear waste and hazardous waste disposal authorities; the Federal Energy Regulatory Commission and its power licensing authority; the Corps of Engineers with dams and engineering guidelines; the Lake Superior Board of Control; the Customs in the United States; the Immigration and Naturalization Service; the Minnesota Department of Natural Resources, and on and on. On Canada's side there are at least five agencies that deal with border matters and that affect U.S. interests. The Ontario Ministry of Natural Resources; the Ontario Ministry of Energy; the Canadian Immigration and Customs; the Canadian Coast Guard and Environment Canada.

With this plethora of agencies and missions, how can we best get around to resolving international disputes? The International Joint Commission is a good example. Some years ago I suggested we have an International Joint Commission to deal with air problems or at least extend the IJC's authority to air. I think that that still is a valid proposal and we ought to proceed along those lines.

Before we would create, however, another agency, we ought to look at those 19 and see if perhaps some umbrella authority couldn't be established that would have some teeth in it and could deal with United States-Canadian border problems in a definitive fashion instead of letting the issues hang and dangle unresolved, year after year.

We ought to carefully consider what kind of final authority we want to give such a commission? Will that authority subject U.S. interests to the rule of international law? Should we abolish, modify or subsume all of the existing agencies under such an international authority? Do we want to maintain some or any of them in some other limited capacity?

In summary, I am suggesting that while the proposal is on the right track, it needs some further refinement, and that is the purpose of this hearing. I'm offering these suggestions, and I suggest that your committee is the appropriate forum to look at and study extensively the Governing International Fisheries Agreement under which the United States and Canada have operated, which does reach conclusions, does reach decisions that can be implemented, and does not leave issues hanging and dangling for years. That is the frustration the people in the borderland feel. That is the direction which you are headed, and with those remarks, I conclude my statement.

Senator DURENBERGER. OK, Jim. Thank you very much. I appreciate the background. I'm sure you have dealt with all 19 of those agencies as well as with each of the problems involved. In the end though, it isn't agencies that make decisions. It is people that make decisions. And I think the search here is for a mechanism that will either force people to make decisions; that is, resolve conflict, or a group of people who can at least make recommendations that then somebody else has to carry out. And that is probably how some of us come to this 20th institution that you're talking about. There are six people that don't have to report to the EPA, don't have to

report to the Forest Service, don't have to report to anything other than they are appointed by their respective governments, presumably people of great stature and respect for their knowledge of inter-American issues who would, in effect, make recommendations that ought to then be implemented by someone.

I need to ask you just one question—an army just crept up behind us with a Congressman in it—and that is, your advice on the Federal-State relationship problem. In part, I suggested that in my question to Mr. Brown earlier, and that is, we are—in effect, on some of these issues, treading on Federalism grounds and different Federalism grounds in Canada than here. The province has a great deal more authority in that so-called Federal system—I think you're certainly more of an expert on that than I—than here, but we have some of the similar kind of problems. The Tenth Amendment might still be a little bit unclear, but I think it was intended to say the national government has limited jurisdiction and all other powers are reserved to the States and so forth. So we tread carefully through this what is the State jurisdiction and what is the national government jurisdiction. Do you have some reactions on that particular issue in your experience as it relates to what the role of the State should be, and is there at some point in time when certain issues need to move from the State decisionmaking, or lack of it, to the national level?

Congressman OBERSTAR. I think this is clearly one of those kinds of issues. The province of Ontario sprawls over eight U.S. States. It has broader authority than any one of those States. It has a very different relationship with its Federal Government than any one of our States has with theirs. Discussions and exchanges of views between a State and a province are very fine until they reach the crux of an issue, economics; then the broader authority must intervene, and that must be the Federal Government on each side. That is why, there is an appeal to Washington saying, "We, the State of Minnesota, have gone as far as we can go. There needs to be some broader forum for resolution of dispute."

Senator DURENBERGER. Then maybe one of the things we are looking for is a process by which Minnesota comes to a conclusion and says, "At this point we can't go any farther," and then they hand it off to this higher level. And I don't think—again, in quoting Joe Alexander's testimony, I don't think we are there. It sounds as though the State of Minnesota wants to go all the way, but it also wants to selectively use the State Department, but it never really asks the State Department to do anything specifically. How do you draw that line? Doesn't it make more sense then that the State takes it to a certain point and then, in effect, everybody can see that the responsibility is then handed off to the national government, and it clearly then becomes our—the national government's responsibility. Today that seems to be very confused. The State says, "This is our authority, and we want you to do certain things." But I'm left confused, in other words, by the role that the State of Minnesota plays in reserving to itself the right to manage fish and to make all these decisions, but to sort of selectively take the view that Joe takes here that, "Well, we want the State Department to put some pressure on somebody, but we don't want

them to tell us what we ought to be doing." How do you resolve that?

Congressman OBERSTAR. That statement has an internal contradiction. It says on the one hand that another commission would take the power away from the people but then says on the other hand that the State Department has to resolve this problem for us.

Under your proposal, the Governor would appoint a person, so the power for establishing a forum would come back to the State. To answer your question, the State of Minnesota, as all States, has jurisdiction over wildlife that are within the State and move from one place to another within a State; the Federal Government does not. The State properly has exercised its jurisdiction to the limit; that is, to the point of analyzing fish populations, determining what are acceptable levels of take, what should be a reasonable management cost and pressure on the fishery, and then the Province goes off and does something else that is inconsistent with that set of facts. The State at that point turns to the Federal Government and says, "We can no longer resolve this issue. It is in your hands." As with the Prairie Portage issue 4 years ago, because Canada saw the wisdom of keeping Prairie Portage open rather than have a whole flock of U.S. Custom Stations shut down that would adversely affect Canadian interests, they chose to keep it open.

There is a broader range of economic issues on which the U.S. Federal Government can deal with Canada—and I can think of several—than can the State of Minnesota deal with the Province of Ontario. The State has no authority to impede commerce between Ontario and Minnesota, but the Federal Government has. We can and have limited steel imports from Canada. We can and did limit cement imports from Canada. Canadians begged for mercy and said they needed relief. Relief was granted, but then when it comes to an issue such as this on the fishing fee, they become adamant. I think we come back to square one. Maybe there are some things we have to limit. That is not a very nice way to do things.

There ought to be some forum in which these issues can be discussed rationally, recommendations proposed and then implemented by the two national governments. I think that is essentially what you're proposing, but I'm saying we ought to take a look at this total context and resolve this plethora of agencies before we proceed to that additional entity.

Senator DURENBERGER. All right. Thank you very much, Jim. I appreciate it a great deal.

[Prepared statement of Congressman Oberstar follows:]

STATEMENT OF THE HONORABLE JAMES L. OBERSTAR

AUGUST 23, 1985

INTERNATIONAL FALLS, MINNESOTA

Mr. Chairman; Members of the Subcommittee: I am pleased to join you this afternoon in International Falls, which is located within the Congressional District I represent, to discuss the issue of establishing a unitary joint commission to regulate the Minnesota-Canadian border.

It is fitting that we meet today in International Falls. This region's livelihood is dependent upon the tourism and economic development initiatives generated by the fishing and recreational opportunities inherent to the boundary waters area. International Falls, along with the rest of northern Minnesota has long been affected by discrepancies and shortcomings in U.S.-Canadian codes.

In discussing the proposal to establish a single joint commission, it is helpful to outline the problems which affect the region in order to understand the scope of authority an International Commission would mandate.

The Canadian Government contends that the border problems are a conservation issue. Every regulation and restriction placed on Canadian waters is not an economic decision, according to the Canadians, but part of a larger scheme to ensure the continued availability of the region's fish, wildlife and natural resources.

While I commend the Canadians for seeking to protect these invaluable assets, it would be naive to overlook the economic motivations accompanying Canada's stringent policies towards the use of its territories. To a degreee I can accept Canada's concern for its resources, and even sympathize with it, but this explanation camouflages the deeper economic motivations.

Canada alleges it would sacrifice a great deal if its waters were unequivocally opened to U.S. fishermen, and has set an agenda which will protect its interests at a severe cost to the United States. Quite frankly, there are some blatant inequities occurring on the Minnesota-Canada border which need to be addressed.

Each of the items I will discuss is a problem the Canadian government has created; allegedly for the sake of resource conservation, but coincidentally, to the decisive advantage of Candian resorters.

Most recently, and perhaps most dramatically, the Ontario Government last May issued a $3 daily user fee for fishermen staying in Minnesota who choose to fish on the Ontario side of Lake of the Woods or Rainy Lake. Not only is this policy one-sided, it is the kind of trade policy that will result in signifigant tension between the two nations. I do not question the Ontario Government's right to control their waters. I do object, however, when U.S. free trade policy is taken advantage of in a form as biased and narrow as the user fee.

The province of Ontario exercises a great deal more autonomy than the State of Minnesota does. Our State has tried on numerous occasions to negotiate with the Ontario government on this issue, but because the boundary waters are international, we are severely limited in what we, as one of fifty states, can do. Minnesota's greatest difficulty has been a reluctance by the Administration to include this issue as part of our national agenda.

Last March, I joined with the entire Minnesota Congressional delegation in urging President Reagan to address the user-fee issue in his March 17 meeting with Prime Minister Mulroney. I was disappointed that the President chose not to make

this issue a part of his agenda, but this rejection in no way downplays the importance of the user fee issue.

Resorters throughout my Congressional District have already suffered from the user fee. Visitors to Minnesota are forced to comply with Ontario's regulations in addition to our own. However, people staying in Ontario are not subject to these same fees. Compliance with the Ontario user fee makes it more expensive for Americans to fish in Canadian waters.

Why would a vacationer, who enjoys fishing on an infrequent basis choose to stay in Minnesota, where fishing is more regulated and more expensive than it is in Ontario? Naturally, vacationers are more inclined to travel to Ontario, where no user-fee is imposed by the United States. It is clear to me that some concessions must be made by the Canadians on this issue.

Other problems also highlight the need for increased discussion between the two governments. In 1981, the Ontario Government deviated from its set limit of six walleyes per person, and imposed a per boat limit of 18 walleyes, irrespective of the number of persons on board. Again, this puts Ontario resorters at a decisive advantage because walleye fishermen staying in Minnesota generally venture into Canada as part of a guided tour on boats which hold as many as 6 people. While the 18 walleye per boat quota succeeds in eliminating the use of larger boats from the U.S. side of Lake of the Woods, it also succeeds in enhancing Canada's own tourism industry.

Discrepancies also exist in the areas of fishing liscence fees, use of motors, worker permits for U.S. outfitters accompanying customers to Ontario, fees for

commercial use of the border waters and water level regulation. These have all been problems in the past, and since no unitary policy exists to address these issues, they will continue to be a source of controversy between the two nations.

None of these problems are new, and historically, the U.S. has attempted to negotiate with Canada on several occasions. The result has been a classic example of too many cooks in the kitchen. Nineteen regulatory boards currently exercise some degree of authority over the boundary waters. Not one of these bodies has a clear mandate to direct a comprehensive international borderland policy, and perhaps none should. The kind of authority any such board would need to make a signifigant impact would be enormous. But, the lack of a set agenda for the border has resulted in a maze of confusion, overlap and inconsistency among the intertwined agencies.

For example, in Lac La Croix, motorized use is prohibited on one side, with no restrictions on the other. The Canadian portion of Rainy Lake enforces a quota system on its commercial fishermen while a similar program is being phased out in U.S. lands outside of the Voyageur's National Park.

In the ten years I have represented the Eighth Congressional District, I have had numerous occasions to work with each of these agencies on border issues. I conclude as the result of these experiences that no agency can solve a problem without questioning the limits of its own authority.

One thing I have determined, is that the authority and advisory capabilties of the agencies, if not united into a single body, must at the very least be defined before bedlam becomes the norm.

In 1904, the United States and Canada displayed a cooperative spirit in signing the Root-Bryce Treaty. This document called for equal treatment of American and Canadian interests in navigation and commerce on border waters. Under Article III of this treaty an International Joint Committee was established. The IJC is the only existing international agency with joint regulatory powers on the boundary waters and is charged with regulation of the use, obstruction and diversion of waters within the boundary waters.

The Rainy Lake Control Board has advisory responsibility in its role as technical agency to the IJC on water levels and lake pollution on Rainy Lake. The Lake of the Woods Control Board serves a similar function for Lake of the Woods.

The National Park Service has complete jurisdiction over the Voyageur's National Park lands, as the U.S. Forest Service has jurisdiction over the Superior National Forest which includes waters located in the Boundary Waters Canoe Area.

The Environmental Protection Agency is responsible for maintaining water quality within the border waters. The United States Department of Energy is responsible for waste disposal in the area, and along those lines, the Federal Energy Regulatory Commission considers power liscences.

The bureaucratic maze continues — the Army Corps of Engineers handles dams and engineering guidelines. The Customs Office levies duties and the influx of goods entering from Canada. The U.S. Coast Guard is responsible for enforcing safe navigation, and the U.S. Immigration Service provides worker permits to fishing guides. The Minnesota Department of Natural Resources has jurisdiction over all American waters not regulated by the Park Service or the Forestry Department.

To add to this confusion, these agencies deal strictly with U.S. interests. The Ontario Ministry of Natural Resources, the Ontario Ministry of Environment, the Canadian Immigration and Customs Services, the Canadian Coast Guard and Environment Canada serve as counterparts to the American agencies.

So it becomes clear that something needs to be done to allow for the smooth handling of border issues. In dealing with the large number of agencies which now exist, it's no wonder any progress at all has been made in border disputes.

This past year, we have seen that the U.S. and Canada, working together on a stated course are capable of arriving at sensible solutions to large problems. Last Spring, Prime Minister Mulroney agreed to exempt the United States from a ten percent excise tax on U.S. travel literature, which Canada has collected since 1982.

The U.S. Congressional Travel and Tourism Caucus, of which I am a member, estimates that during a ten month period last year, Canada collected over $12,000 from travel literature distributors throughout our nation. Exemption of the U.S. from this unfair tax is an indication that the U.S. and Canada can, and more importantly have negotiated on important border issues.

Two weeks ago, I successfully petitioned the IJC to lower the water level in Lake Superior. The lake's level had risen to a dangerously high level, the IJC accepted my proposal, and the amount of water in the lake has been reduced.

This is a further indication that discussion and understanding between these two nations can accomplish meaningful goals. I question whether the problems of the U.S.-Canadian border necessitate yet another regulatory or advisory board.

The Chairman's idea is a good one; and one which certainly makes sense. The State of Minnesota has tried valiantly in the past to achieve such a commission, but Canada has rejected any attempts at compromise, arguing that their resources are not a negotiable issue.

Perhaps what is needed is a forum setting — in which representatives of both nations can meet without the guise of each exercising authority — to engage in discussion of how best to resolve an issue. Then, the forum panel can delegate the proper proceedure to follow in resolving the dispute.

While I do not oppose creation of a joint commission, I think that there are some very serious questions to be answered before we go any further. Do we want to give this commission final authority over border issues? Will that authority subject U.S. interests to international law? Do we want to abolish the existing agencies, or do we want to maintain them on a limited capacity?

I hope that this Subcommittee will consider these questions before taking any final action on this issue. I look forward to working with you on this most important issue, and thank you again for the opportunity to share these thoughts today.

Senator DURENBERGER. Arlan Stangeland, how are you? Congressman Arlan Stangeland is obviously no stranger to this area. He is certainly no stranger to the issue. It was he who first came up with the proposal that we move to some kind of a mediating institution of some kind so we would have some people who could make decisions in this process. And in a House file, whose number I don't have in front of me, he has proposed a similar kind of commission. So we welcome you and your interest and expertise, Arlan, in this area to the hearing of the subcommittee and look forward to your testimony.

TESTIMONY OF HON. ARLAN STANGELAND, A U.S. CONGRESSMAN FROM THE STATE OF MINNESOTA

Congressman STANGELAND. Thank you, Senator, very much. Let me say I want to commend you for the foresight in conducting this field hearing and calling to witness here in International Falls those who desperately need some relief from the problem of the border areas, particularly those Minnesotans that are residing and using the jointly shared international boundary waters area.

This hearing, and House and Senate companion legislation are the catalysts that are needed for the Minnesota-Ontario Joint International Border Commission to become a reality. As the representative from the Seventh District, I welcome and appreciate the opportunity that you have provided me and provided the people up here.

The creation of this joint commission, I think, is not only timely, but it is extremely imperative. Perhaps we are even acting too late now to correct the damage that has already been done to the economics of this area. I, as one member of the House, attest to the difficulties that are encountered in negotiating first with a foreign country, on one hand, and then employing the services of our State Department on the other.

For months I have been in contact with Canadian officials in Washington requesting their intercession to iron out compromises and/or a moratorium with Ontario on the implementation of its user fee in the border waters. I do have to say that the Canadian Embassy in Washington has been extremely helpful from time to time in mediating some of the little brush fires that have come up on the border causing some severe problems on our side.

In addition, as you know, you, Congressman Oberstar, and Senator Boschwitz joined with me in coordinating and hosting a conference in Washington in late February where Canadian and Ontario officials and Minnesota and U.S. officials participated in an in-depth examination of the controversial issues affecting this border area. The feeling that emerged from this Washington summit was, in my opinion, that an international joint border commission is necessary to accommodate the conflicts that have arisen in this specific area.

As far back as 1842, Canada and the United States have pledged their integrity and cooperation when the two nations signed the Webster-Ashburton Treaty providing, "that all the water communications on the lakes along the border between the United States and Canada shall be free and open to the use of the citizens and

the subjects of both countries." Regrettably, Ontario's user fee may be viewed as a reprisal, and certainly violates the spirit, if not the letter, of that treaty. Hostile attitudes and regulations in our decade are unnecessary, unwarranted, and unlawful.

The establishment of an International Joint Commission in the United States and Canada has extremely limited responsibility—the established International Joint Commission. And then, only at the behest of the two governments.

Too, the State Department is responsible for this area bound by treaty and must oversee the execution of the Treaty's tenets. The most recent example of the State Department's prudence is its rejection of the IJC's consideration of Ontario's imposed user fee and its ramifications.

Assistant Secretary William Ball, however, in his response to my request that the IJC intervene, does explain this, and I quote:

> It is our view that the user fee on U.S. sport fishermen is not a regulation primarily affecting navigation and, hence, does not fall squarely within the language of relevant U.S.-Canadian treaties. Due to its discriminatory nature, however, the regulation can certainly be argued to be inconsistent with the spirit of those treaties which contemplate that necessary regulations will be imposed non-discriminatorily. In any case, we are fully in accord with your views that the problem is an extremely vexing one which calls for creative resolution.

Mr. Chairman, I would ask that that letter from Secretary Ball be inserted in the hearing record.

Senator DURENBERGER. It will be made part of the record.

[The letter, with an enclosure, referred to follows:]

United States Department of State

Washington, D.C. 20520

Dear Mr. Stangeland:

Thank you for your letter of June 18 to the Secretary concerning referral of the Province of Ontario's policies on boundary waters to the International Joint Commission (IJC).

Effecting objectives such as those concerning fishery management or conservation (as the Ontario fee purports to do) is a complex and difficult matter for both Canadians and Americans, and regulations with conservation and resource management goals have, of course, been imposed in the United States as well as in Canada. Due partly to the complexity of regulating these matters and the strong State/Provincial interests with respect to the particular boundary waters involved, we have considered it best for the State and Provincial authorities, with the assistance of their respective Federal Governments, to work together to develop an acceptable cooperative arrangement addressing conservation and other appropriate concerns of both sides. The Department does not, therefore, presently consider recourse to the IJC warranted in this instance. We are, however, carefully monitoring the situation and will, of course, continue to consider all available methods of resolving the problem.

As we have previously noted, it is our view that the user fee on U.S. sport fishermen is not a regulation primarily affecting navigation and, hence, does not fall squarely within the language of relevant U.S.-Canadian treaties. Due to its discriminatory nature, however, the regulation can certainly be argued to be inconsistent with the spirit of those treaties which contemplate that necessary regulations will be imposed non-discriminatorily. In any case, we are fully in accord with your views that the problem is an extremely vexing one which calls for creative resolution.

With best wishes,

Sincerely,

William L. Ball, III
Assistant Secretary
Legislative and Intergovernmental Affairs

Enclosure: Correspondence returned.

MDN
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Lending

June 18, 1985

Honorable George Shultz
Secretary
Department of State
Washington, D.C. 20520

Dear Mr. Secretary:

Attached is a copy of the resolution, passed by the Board of commissioners, Lake of the Woods County, Minnesota, calling upon the Department of State to refer Ontario's Treaty violations to the International Joint Commission.

I wholeheartedly concur and support the IJC's intervention in this volatile issue.

Recently, chosen as a representative from the United States, I participated at the Canadian/U.S. Interparliamentary Group, held in Canada, and, at that forum, expressed Minnesota's problems with Ontario. During our discussion of Minnesota's problems with the Province, Canadian delegates suggested that the IJC deal with this entire conflict.

Ontario's user fee is just another attempt in a long series of regulations imposed by the Province to reap profits from Minnesota businesses severely crippled by Ontario's continuous disregard of its Treaty responsibilities to the United States.

Your immediate attention to my request is most appreciated.

With best wishes, I am

Sincerely,

Arlan Stangeland
Member of Congress

Enclosures

LAKE OF THE WOODS COUNTY
BOARD OF COMMISSIONERS

Resolution 85-31

The following resolution was proposed by Commissioner Roomaarden and moved for adoption;

WHEREAS, the Province of Ontario has imposed a reduced limit of walleyed pike which applies only to non-resident boats from a Minnesota base of operations, on Lake of the Woods, and

WHEREAS, the Province of Ontario has imposed a $3.00 per day user fee only on non-resident anglers operating out of a Minnesota base, on Lake of the Woods, and

WHEREAS, these restrictions violate the Root-Bryce Treaty of 1909 existing between the United States of America and the Dominion of Canada in that the regulations violate the provisions of the treaty guarantee of free navigation and non-discrimination to inhabitants of each country, and

WHEREAS, the said regulations adversely effect the rights and privileges claimed by the citizens of Lake of the Woods County as well as of the United States; and adversely affect the commerce and economy of Lake of the Woods County, and

WHEREAS, ARTICLE IX of said Treaty provides for matters of difference arising between the countries involving the rights, obligations and interests of the other or their inhabitants, be referred to the International Joint Commission established by said Treaty,

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Lake of the Woods County, that the government of the United States of American acting through its Department of State be called upon to refer to the International Joint Commission the matter of said violations of the Treaty and to call upon the International Joint Commission to conduct hearings in Baudette, Lake of the Woods County, Minnesota, U.S.A. as soon as possible in order to inquire into the matter of said violations.

Seconded by Commissioner Mouw and the same being put to a vote was duly carried, All members voting "AYE".

I certify this is a true and complete copy of the original hereof which is on file and of record in the office of County Auditor, Lake of the Woods County, Minnesota.

Dated at Baudette, Minnesota June 11, 1985

(seal)

Charles F. Gosen, County Auditor

Congressman STANGELAND. The more involved I have become in attempting to solve the border controversies, the more I seem to become a prisoner of these same circumstances. Thus, the frustration and futility of my endeavors prompted me to introduce H.R. 5340 in the 98th Congress and H.R. 1080 in the 99th Congress. This legislation authorizes and requests the President to invite the Government of Canada to join with the United States in the creation of a commission to oversee water policy, including environmental, economic, and travel issues related to water policy on the lakes intersected by the boundary between the State of Minnesota and Canada.

This is not as State claims a creative resolution, but rather, a strong first step.

Mr. Chairman, I would also request that H.R. 1080 be included in the hearing record as well.

Senator DURENBERGER. It will be made part of the record.

Congressman STANGELAND. My long lasting concern for the boundary waters area is reflected in this legislation. While the measure may not accomplish all the objectives we wish to address, it is a preliminary initiative establishing the commission and defining the commission's jurisdiction. Since the introduction of H.R. 1080, I have revised and enlarged the scope of this commission.

The Citizen's Council on Voyageurs National Park issued a resolution supporting the principle of the legislation, and certain constituents in the Seventh District also endorse the concept.

The Commission's authority will reflect our mutual respect, responsibility and cooperation for the protection of the valuable jointly shared international boundary waters between the United States and Canada and Minnesota and Ontario. Furthermore, the JIBC is designed to encourage and enhance the Webster-Ashburton Treaty of 1842 and the root-Bryce Treaty of 1909.

H.R. 1080 limits the Commission to six members, three of whom represent the United States and three of whom represent Canada. Perhaps Members of Congress whose districts border Canada should be added as ex officio members. Jim and I need a little more work. We are not busy enough in Washington, you understand.

The voting members from the United States should be appointed by the President from nominations submitted by the Governor of the State of Minnesota, and they should be qualified in international affairs, particularly Canadian affairs, and versed in fish, wildlife, and tourism issues related to water policy. Individuals representing the same country should not serve consecutive terms as chairman of the commission.

The budget for the Commission could be allocated proportionately from the funding of each of the departments charged with regulatory responsibility on the United States-Canadian boundary waters along the border.

A provision could be inserted in the legislation providing for the other logistics of the commission—staff compliment, location, etcetera—after the commissioners have been appointed and the chairman selected.

Resource degradation in the border waters has precipitated much discussion, but action that has been at cross purposes. United and cooperative resource management between Ontario and Minnesota

by Ontario and Minnesota is an immediate necessity whose short-term neglect may lead to long-term disastrous repercussions for both countries. The commission will be responsible for developing and overseeing a joint, comprehensive resource management program for these waters.

Mr. Chairman, I believe the establishment of this joint commission is the only recourse we now have. Through its joint leadership and authority, we will see the end of constant erupting conflicts leading to retaliatory actions, and we could return to the amicable, peaceful relationship with our northern neighbor on these important issues.

With that, Mr. Chairman, I thank you. I know that you have many other people who would like to testify. I would be most happy to respond to questions you might have.

Senator DURENBERGER. Just a couple questions, Arlan. You have been at this longer than I on the issue of the commission. The Canadian Ambassador said that, "What good is it for you to pass a piece of legislation that puts three Canadians on a commission? We just go like this to it." [Gesturing.] He said it in a nice way, and I think both of you appropriately recognized that their ambassador in Washington has worked very hard to try to help us with these issues.

Mr. Brown from the State Department says unilateral legislation cannot itself bring the Canadians to the table and is, in fact, unlikely to be needed to implement an agreed upon mechanism unless experience over time indicates that a permanent body is truly called for. But the point here, unilateral legislation cannot bring Canadians to the table. Have you found a way to get the Canadians to the table if we pass this legislation?

Congressman STANGELAND. Well, my first response, Senator, is that we have tried about every avenue possible, and I'm not at all certain that this is a panacea. I'm not at all certain that Canada would work with us in establishing a joint commission, number one. Number two, the Canadians serving on that commission might be just as parochial as the officials in Ontario. All of those are uncertainties. But, as I say, I think we have tried almost every avenue. I think the State of Minnesota has negotiated and attempted in good faith to resolve some of the problems and nothing has worked.

The problem that we face is that Ontario in this game holds all the aces, and Minnesota has nothing but deuces in its hand. There is nothing that Minnesota can do in retaliation. As Congressman Oberstar pointed out, we can't do anything—Minnesota can't do anything about commerce. We can't do anything to get the Canadian's attention from the Minnesota side. And I think it has to go to a higher elevation of Federal intervention.

It would seem to me that there are many things that we could do that we could work in concert through the joint commission. You raised the question to Congressman Oberstar about State and Federal rights in this matter. You know, I think we are talking only about an international boundary, and I don't know of anyplace in the world where States or provinces are charged with the jurisdiction on an international boundary. That is strictly a Federal responsibility. And in the past, it has worked fine that the State and

the Province have had the jurisdiction to be overseen by the Federal Government.

If the States and Provinces acted totally out of concert or not judicially, those Federal enclaves would step in, but they have acted quite well in the past. But now we find a different situation arising, and it is a matter up on this border and particularly the district that I represent of the economic future of that northern Minnesota border. Ontario, as I said, has all the trump cards, and Minnesota has none, and they can force our people out of business. And really, it is a stated policy or stated goal of officials in Ontario, while not ever adopted, certainly stated as long as 3 years ago to stop and hold back the development of tourism from the Minnesota side.

Senator DURENBERGER. The second question. How do you feel about moving this kind of legislation when it is opposed by the State of Minnesota? The testimony that Joe Alexander was not able to deliver because he couldn't get up here on behalf of the State characterizes this commission proposal as a new layer of government, as a diversion of taxpayers' money to unnecessary tasks, as an additional bureaucratic procedure, as a delay mechanism, and as a drain of power from the people. That is a pretty strong characterization of what sounds to me by your testimony as a very well intentioned and relatively inexpensive decisionmaking device, but how would you propose to pass this through the House if the State of Minnesota says they don't want it?

Congressman STANGELAND. Well, I would hope that the State of Minnesota would change its attitude in this matter since they have not resolved the problem. And if they can't resolve the problem and the dispute with Ontario and the economic hardship falls on the border people in Minnesota, and Minnesota is unwilling to allow a Federal enclave to step in and perhaps resolve the problem, then Minnesota probably wants to pay reparation for the damages that are done on the Minnesota side. And I don't think Minnesota wants to pay reparations to my resort owners. And if they don't want to pay reparations for economic damage done, then maybe they ought to support some kind of joint commission that really only affects the boundary waters.

Now, I would just advise you that the DNR in the State of Minnesota has never ever contributed enhancement of the resource on Lake of the Woods. They have never stocked fish in there, but they have collected license fees and they have put wardens on there and, you know, I think we had better lay this all out on the table. I don't want to get too hard on Minnesota. I want to help Minnesota, and I think in the long run we would be.

I have also talked and the resorters on that border have discussed the possibility of establishing jointly fisheries to restock in Lake of the Woods with Ontario. There is enough tourist business and industry on the boundary waters area for both Ontario and Minnesota to thrive. I think it can be shared, but it has to be done jointly and cooperatively. At the present time, Ontario, as I have said before, has all the benefits of American tourists going across the border and trying to attract them up there by making it punitive for them to stop on the Minnesota side and stay in Minnesota resorts and camps.

Senator DURENBERGER. Very good.

[Congressman Stangeland's prepared statement, with an attachment, follows:]

Prepared Statement of Hon. Arlan Stangeland

MR. CHAIRMAN, I commend you for the foresight in conducting this field hearing and calling to witness those who desperately need the Commission in place today - Minnesotans residing in and using the jointly shared international boundary waters area.

This Congressional hearing, and House and Senate companion legislation are the catalysts needed for the Minnesota/Ontario Joint International Border Commission to become reality. As the representative from the Seventh Congressional District, working many years to resolve these border problems, I welcome and appreciate this opportunity you have provided me.

The creation of the Joint International Border Commission is not only timely but imperative. In my capacity as one Member of the United States House of Representatives, I attest to the difficulties encountered in negotiating with a foreign country, on one hand, and employing the services of our State Department on the other.

For many months I have been in contact with Canadian officials in Washington requesting their intercession to iron out a compromise and/or moratorium with Ontario on the implementation of its user fee in the border waters. In addition, as you know, you joined with me in coordinating and hosting a conference in Washington, D.C. in late February where Canadian and Ontarian dignitaries, and Minnesotan and United States officials participated in an in-depth examination of the controversial issues affecting this border area. The feeling emerged from this Washington summit that a joint international border commission is now necessary to accommodate the difficulties that have arisen in this specific area.

As far back as 1842, Canada and the United States pledged their integrity and cooperation when the two nations signed the Webster-Asburton Treaty providing that "all the water communications on the lakes along the border between the United States and Canada shall be free and open to the use of the citizens and subjects of both countries." Regrettably, Ontario's user fee may be viewed as a reprisal, and certainly violates the spirit if not the letter of the Treaty. Hostile attitudes and regulations in our decade our unnecessary, unwarranted and unlawful.

The established International Joint Commission, United States and Canada has extremely limited responsibility, and then, only at the behest of the two governments.

Too, the State Department is responsible for this area, bound by treaty, and must oversee the execution of the Treaties' tenets. The most recent example of the State Department's prudence is its rejection of the International Joint Commission's consideration of Ontario's imposed user fee and its ramifications.

Assistant Secretary William L. Ball, however, in his response to my request that the IJC intervene, does explain that " . . . it is our view that the user fee on U.S. sport fishermen is not a regulation primarily affecting navigation and, hence does not fall squarely within the language of relevant U.S.-Canadian treaties. Due to its discriminatory nature, however, the regulation can certainly be argued to be inconsistent with the spirit of those treaties which contemplate that necessary regulations will be imposed non-discriminatorily. In any case, we are fully in accord with your views that the problem is an extremely vexing one which calls for creative resolution."

Mr. Chairman, I ask that this letter from Assistant Secretary Ball be inserted in the hearing record.

The more involved I have become in attempting to solve the border controversies, the more I seem to become a prisoner of these same circumstances. Thus, the frustration and futility of

all my endeavors prompted me to introduce H.R. 5340 in the 98th Congress and H.R. 1080 in the 99th Congress. This legislation "authorizes and requests the President to invite the Government of Canada to join with the United States in the creation of a commission to oversee water policy (including environmental, economic, and travel issues related to water policy) on the lakes intersected by the boundary between the State of Minnesota and Canada."

This is not as State claims a "creative resolution," but rather, a strong first step. Mr. Chairman, I also request that H.R. 1080 be included in the hearing record.

My long lasting concern for the boundary waters area is reflected in my bill H.R. 1080. While this measure may not accomplish all the objectives we may wish to address, it is a preliminary initiative establishing the Commission and defining the Commission's jurisdiction. Since the introduction of H.R. 1080, I have revised and enlarged the scope of the Commission.

The Citizens' Council on Voyaguers National Park issued a resolution supporting the principle of this legislation, and constituents in my Seventh Congressional District also endorse this concept.

The Commission's authority will reflect our mutual respect, responsibility and cooperation for the protection of the valuable jointly shared international boundary waters area between the United States and Canada, and Minnesota and Ontario. Furthermore, the JIBC is designed to encourage and enhance the Webster-Ashburton Treaty of 1842 and the Root-Bryce Treaty of 1909.

H.R. 1080 limits the Commission to six members, three of whom represent the United States and three of whom represent Canada. Perhaps Members of Congress, whose districts border Canada, should be added as ex officio members.

The voting members of the Commission from the United States should be appointed by the President from nominations submitted by the Governor of the State of Minnesota, and they should be qualified in international affairs, particularly Canadian affairs, and versed in fish, wildlife and tourism issues related to water policy. Individuals representing the same country should not serve consecutive terms as Chairman of the Commission.

The budget for the Commission could be allocated proportionately from the funding of each of the Departments charged with regulatory responsibility on the U.S.-Canadian boundary waters along the border.

A provision could be inserted in the legislation providing for the other logistics of the Commission - staff compliment, location - after the Commissioners have been appointed and the Chairman selected.

Resource degradation in the border waters has precipitated much discussion but action that has been at cross purposes. United and cooperative resource management between Ontario and Minnesota by Ontario and Minnesota is an immediate necessity whose short-term neglect may lead to long-term disastrous repercussions for both countries. The Commission will be responsible for developing and overseeing a joint, comprehensive resource management program for these waters.

Mr. Chairman, I believe that the establishment of this Joint International Border Commission is the only recourse we now have. Through its joint leadership and authority, we will see the end of constant erupting conflicts leading to retaliatory reactions, and return to the amicable, peaceful relationship with our northern neighbor on these important issues.

Thank you.

I

99TH CONGRESS
1ST SESSION

H. R. 1080

To authorize the President to negotiate an agreement with Canada creating a joint commission to oversee water policy on lakes bordering Canada and Minnesota.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 1985

Mr. STANGELAND introduced the following bill; which was referred to the Committee on Foreign Affairs

---

A BILL

To authorize the President to negotiate an agreement with Canada creating a joint commission to oversee water policy on lakes bordering Canada and Minnesota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The President is hereby authorized and requested to invite the Government of Canada to join with the United States in the creation of a commission to oversee water policy (including environmental, economic, and travel issues related to water policy) on the lakes intersected by the boundary between the State of Minnesota and Canada.

SEC. 2. It is the sense of the Congress that—

(1) the commission created pursuant to section 1 should be permanent;

(2) in carrying out its water policies, the authority of such commission should include (but not be limited to) the authority to establish and enforce licensing fees and fish catch limits;

(3) all proceeds from such fees should be used to pay the cost of replenishing the resources of the lakes intersected by the boundary between the State of Minnesota and Canada, including the operation of fish hatcheries;

(4) such commission should be comprised of 6 members, 3 of whom represent the United States and 3 of whom represent Canada;

(5) the members of such commission should be appointed to terms of 3 years;

(6) the members representing the United States should—

(A) be appointed by the President from nominations submitted by the Governor of the State of Minnesota, and

(B) be qualified in international affairs, particularly Canadian affairs, and versed in fish, wildlife, and tourism issues related to water policy; and

(7) individuals representing the same country should not serve consecutive terms as Chairman of the commission.

Senator DURENBERGER. Jim Oberstar.

Congressman OBERSTAR. Thank you, Senator. Mr. Chairman I have no questions. Just a word of congratulations to my colleague to the west who has joined with me and who has led the fight on behalf of the constituents that he represents and vigorously has carried the fight to many forums, including those in Canada in which we both served. It is a pleasure working with you, Arlan, and I thank you for the leadership you're giving in this area.

Seantor DURENBERGER. Arlan, thank you very much. If you have time to join us here for the rest of the panel, you're certainly welcome.

I will ask Joe Rian, representing my colleague Rudy Boschwitz, and Stan Cornelius, why don't you come up at the same time. You are what remains of panel number two, since the State Senator and the Commissioner of DNR have decided not to participate.

Joe Rian.

Mr. BOKORNEY. Senator Durenberger?

Senator DURENBERGER. Yes, sir?

Mr. BOKORNEY. I would like to interpose just a minute. I came to this meeting because I thought you were looking for some grass roots opinions. All I have heard are elected officials and bureaucrats talking. Are we public going to be allowed to ask a question or two?

Senator DURENBERGER. As soon as we get through the next two witnesses——

Mr. BOKORNEY. Well, you are within 7 minutes of your closing.

Senator DURENBERGER. I'm not within 7 minutes of my closing.

Mr. BOKORNEY. Well, by your announced closing.

Senator DURENBERGER. I'm sorry. We are not going to close in 7 minutes.

Mr. BOKORNEY. Twenty-four hours before I came I did get your letter saying that if we wanted to express opinion, it had to be in writing, but that is pretty short notice.

Senator DURENBERGER. I'm sorry about that. I didn't send the letters out.

Mr. BOKORNEY. I thought you were looking for a little local grass roots opinion by people who are putting up with these regulations and might have an idea or two.

Senator DURENBERGER. OK. Well, no one is going to close this hearing off in 7 minutes. If you were here at 2:30, you know that a lot of the witnesses were delayed by weather and that sort of thing.

Mr. BOKORNEY. If we wait, we will be allowed to have a little say?

Senator DURENBERGER. You bet. Yes. That's the purpose of having the hearing.

Mr. BOKORNEY. I thank you.

Senator DURENBERGER. All right. You're welcome.

Joe Rian.

HON. RUDY BOSCHWITZ, U.S. SENATOR FROM THE STATE OF MINNESOTA, REPRESENTED BY JOSEPH RIAN

Mr. RIAN. Mr. Chairman, thank you for permitting me to speak today. Senator Boschwitz sends his greetings and apologizes for his

inability to speak to you personally. He has asked that I deliver a brief message and stress our intention to work with you, Senator Durenberger, Congressman Stangeland, and Congressman Oberstar toward a final and satisfactory resolution.

This hearing is, unfortunately, necessary because of Ontario's persistence in a policy which selectively discriminates against Minnesotans. This nonresident fee does not apply to the border areas of Michigan, Wisconsin, or Ohio. No Canadians pay this fee, even if they are nonresidents of Ontario. This so-called nonresident fee is applied selectively to those people fishing boundary waters out of Minnesota locations. It should not be called a nonresident day use fee, but it should be called a Minnesota day use fee. It is, in effect, imposed to eliminate competition from Minnesota's resorts.

Our reaction, of course, is that we can't allow the stimulation of Canadian economic development at the expense of our State's businesses. That is why Rudy has supported and will continue to support efforts to convince our Canadian neighbors that since there are many reciprocal benefits enjoyed by both sides of the border, it is not good policy to selectively challenge one area or one beneficiary.

Yet, in spite of inquiries to the Province of Ontario, both directly and through the U.S. Department of State and the Canadian Ministry for External Affairs, we have met with little success.

While we must persist in these established channels, Rudy is hopeful that this meeting and others like it will result in new proposals for effective solutions, which, admittedly, have been hard to find.

Senator Boschwitz also supports efforts to establish an International Boundary Waters Commission. We all know that there have been problems on both sides of the border stemming from the large number of governmental agencies with jurisdiction over different aspects of resource management. A joint commission could be extremely useful in coordinating policy and preventing the confusion and complications like this most serious one that repeatedly take place.

Rudy has asked me to express his appreciation to Senator Durenberger and to Congressman Stangeland for their leadership on this issue, to ask your support for their continued efforts and to assure you that our office is prepared to work—and work hard—with them and you for a satisfactory solution. Thank you.

Senator DURENBERGER. Thank you very much.

Stan Cornelius, who is the chairman of the County Board of Lake of the Woods County. Stan, we welcome you.

TESTIMONY OF STAN CORNELIUS, CHAIRMAN, COUNTY BOARD, LAKE OF THE WOODS COUNTY, MN

Mr. CORNELIUS. Mr. Chairman and members of the committee and friends, as Senator Durenberger stated, I sincerely hope that everyone in the audience here who wishes to give testimony will have the privilege of doing so. That's the purpose of a public hearing. And I'm very happy to see as many here this afternoon. It is very encouraging.

My name is Stan Cornelius and I am chairman of the Lake of the Woods County Board of Commissioners. I have been a lifelong resident of Lake of the Woods County and of Minnesota as well.

Being an avid fisherman myself, the comments I'm about to give you today affect me personally as well as it does every citizen that lives and works in Lake of the Woods County and any of the border waters. Also being a businessman in Baudette for 35 years, I well know the negative effects these issues are having on the economy of our area.

I wish to bring the following issues to your attention. On May 18, 1985, a Border Waters Angling Validation Tag, commonly called a user fee, was implemented by the Province of Ontario on some non-resident anglers, only aliens to Canada from a U.S. base of operations. On my full written statement, I'm attaching exhibit 1 and 2, which are Ontario fact sheets relating to the user fee, and I wish those to be part of the record, if they may be so.

In May 1980, the Province of Ontario imposed a limit of 18 fish per day per boat on non-residents fishing the Ontario side of Lake of the Woods. To my full statement, I'm also attaching exhibit 3, which is a copy of an Ontario amendment to their fishing regulations relating to the 18 fish limit.

Senator DURENBERGER. It will be made part of the record.

Mr. CORNELIUS. Thank you. The stated and sole purpose of these regulations were best articulated by B. D. McGregor, district manager for the Ministry of Natural Resources for the Province of Ontario, when he wrote to Mr. Westerlund on March 12, 1982. I quote from that letter. "It is our intention to eliminate the charter boat industry from the Ontario waters and the methodology may provide some inconvenience to other fisherman." And that definitely has—and I have as—I'm attaching as exhibit 4 the full text of the letter from B. D. McGregor to Mr. Westerlund.

Senator DURENBERGER. We will make that part of the record, Stan.

Mr. CORNELIUS. I was born in Lake of the Woods County on January 2, 1920. I can testify from my own experience and observations that historically the international border was for all of practical purposes thought of by citizens of both countries not as a one dimension line, but as a corridor, and that corridor was the international waterway. Citizens of either country had the right to traverse and use the waterway under the provisions of the treaties and the laws of their respective countries as long as they did not make landfall.

Consistent with the intent of the treaties, we were on the border when we were on the water; not across the border. Our citizens have historically exercised these treaty rights, and on a personal basis I'm sad to see these eroded.

But also as important are the economic consequences to our county. History and the background of our culture shows us that many of our people invested their money and labor to build businesses relying on the continuance of the rights given them under the treaties of our two nations. Our county and cities of this area have also had to respond to the growth that every tourist industry entails.

It is our concern that these actions, if allowed to remain, would negatively affect the business and tourist industry in Lake of the Woods County and would, therefore, seriously erode the economic base of our area.

I would like to quote a few of the economic data. I have got attachment 5, which I would like as part of the record to be attached to it.

Senator DURENBERGER. That, too, will be made part of the record.

Mr. CORNELIUS. I just would expound just a little bit on the economic data for the benefit of the committee and the people here in general.

Lake of the Woods County has a low population. Our total population on the last census—and that was a special census we took which was very accurate—was 3,925. We have 25 resorts. Of these 25 resorts, we had 51 launches for sport fishing in 1982, and only 35 sport fishing launches in 1985. That is a decline of 31 percent. Resorts pay 24 percent of our total county real estate tax. The 25 resorts employed 511 people in 1982, and that did not include owner operators—that is just employees, workers—and only 351 in 1985. That is a decline of over 31 percent. That is 160 people who are unemployed. When you take a population of 3,925, this is a drastic decline in employment.

From 1982 to 1984, there was a decline of 14 percent in fishing licenses sold. So when you take all these together, you have a decline in the number of launches that are operating; you have a decline in the number of people employed, that the resorts employ, directly employ; and you have a decline in fishing license revenue. Yet, this already is badly eroding our economic base.

It is our opinion and concern that these aforementioned actions by the Province of Ontario constitute violations of the Webster-Ashburton Treaty of 1842 and the Root-Bryce Treaty of 1909. Those treaties, and especially the 1909 treaty, prohibit discrimination to the citizens, ships, boats, and vessels of either country and prohibit any restriction of free commerce and navigation.

The 1909 treaty calls for an International Joint Commission to settle matters of differences. Certainly other methods have failed. And as Carroll Brown stated, we probably should have some more meetings between Minnesota and Ontario. And we have had meetings between Minnesota and Ontario, and they produce nothing. We have to get our Federal legislators involved on the U.S. side and your Federal legislators on the Canadian side to come together, as well as Minnesota-Ontario in a joint committee. And you can call it an International Border Committee or an International Joint Committee, or whatever you want to call it, to try and settle these differences we have.

And when you come to the 18 fish law and the user fee, those who are discriminatory, and we need definite action on those problems.

We seek to refer to an International Commission these differences as provided by the treaty, and for our respective governments to honor the terms of those treaties. And I'm attaching as my full statement exhibit 6 and 7, which are copies of the Webster-Ashburton and the Root-Bryce Treaties.

Senator DURENBERGER. OK.

Mr. CORNELIUS. I wish to thank Senator Durenberger and distinguished members of this committee for allowing me this opportunity to appear before you today.

In closing, I wish to convey the support of the citizens of Lake of the Woods County for the establishment of an International Border Commission or Joint Commission, to act as a forum for differences that may arise between the governments of our two nations to work for a mutual solution. I thank you. Are there any further questions that anyone wishes to ask at this time?

Senator DURENBERGER. Stan, thank you very much. No. I was going to ask you some questions and ask you to elaborate on that, but because of the lateness of the hour, and I have got thinking that it isn't my time that is the problem, it might be somebody else's time. I'm going to stay overnight. Not necessarily in this room, but we do want to give everybody an opportunity to be heard here today, so——

Mr. CORNELIUS. Thank you for the opportunity.

Senator DURENBERGER. Thank you both very much.

[Mr. Cornelius' prepared statement, with attachments, follows:]

218-634-2836

LAKE OF THE WOODS COUNTY
BOARD OF COMMISSIONERS

INTERNATIONAL JOINT COMMITTEE HEARING
AUGUST 23, 1985
INTERNATIONAL FALLS, MINNESOTA

Honorable Chairman and members of the Committee my name is Stan Cornelius; I am Chairman of Lake of the Woods County Board of Commissioners, and a life-long resident of the county. Being an avid fisherman myself the comments I am about to give you today affect me personally as well as every citizen living or working in Lake of the Woods County, also being a business man in Baudette for 35 years I know well the negative effect these issues are having on the economy of our area.

I wish to bring the following issues to your attention;

1) On May 18, 1985 a Border Waters Angling Validation Tag (commonly called a User Fee) was implemented by the Province of Ontario on some non-residents anglers, only aliens to Canada from a U.S. base of operations.
**(Exhibits 1 & 2)

2) In May of 1980 the Province of Ontario imposed a limit of 18 fish per day per boat on non-residents fishing the Ontario side of Lake of the Woods.
**(Exhibit 3)

3) The stated and sole purpose of these regulations were best articulated by D. B. McGregor, District Manager for the Ministry of Natural Resources for the Province of Ontario when he wrote to Mr. Westerlund on March 12, 1982. I quote from that letter; "It is our intention to eliminate the charter boat industry from Ontario waters." and "The methodology may provide some inconvenience to other fishermen."
**(Exhibit 4)

4) I was born in Lake of the Woods County on January 2, 1920. I can testify from my own experience and observations that historically the International Border was for all practical purposes thought of by citizens of both Countries not as a one dimensional line but as a corridor, and that corridor was the International Waterway, a citizen of either country had the right to traverse and use the waterway, under the provisions of the treaties, and the laws of their respective country, as long as they did not make landfall.

Consistent with the intent of the treaties we were "on the border" when we were on the water - not across the border.

Our citizens have historically exercised these treaty rights and on a personal basis, I am sad to see them eroded.

But also as important are the economic consequences to our county. History and the background of our culture shows us that many of our people invested

their money and labor to build businesses relying on the continuance of the rights given them under the Treaties of our two nations. Our County and cities of this area have also had to respond to the growth which that very tourist industry entailed.

It is our concern that these actions, if allowed to remain, would negatively affect the business and tourist industry in Lake of the Woods County, and would therefore seriously erode the economic base of our area.
**(economic comments - Exhibit 5)

5) It is our opinion and concern that these aforementioned actions by the Province of Ontario constitute violations of the Webster Ashburton Treaty of 1842 and the Root-Bryce Treaty of 1909. Those Treaties and especially the 1909 treaty prohibit discrimination to the citizens, ships, boats and vessels of either Country, and prohibit any restriction of free commerce and navigation.

The 1909 Treaty calls for an International Joint Commission to settle matters of difference. Certainly other methods have failed. We seek to refer to an International Joint Commission these differences as provided by the treaty, and for our respective Governments to honor the terms of those treaties.
**(Exhibit 6 & 7)

I wish to thank Senator Durenberger and the distinguished members of this committee for allowing me this opportunity to appear before you today. In closing I wish to convey the support of the citizens of Lake of the Woods County for the establishment of an "International Joint Commission" to act as a forum for differences that may arise between the governments of our two nations.

Stan Cornelius

Stan Cornelius
Chairman of the County Board
Lake of the Woods County

EXHIBIT 1

FACT SHEET

January 1985

Ontario's Border Waters

Beginning May 18, new Border Waters Angling Validation Tags will be required by non-resident anglers who fish in the border waters of northwestern Ontario---Rainy River, Rainy Lake and Lake of the Woods---from a U.S. base of operations.

The new tag must be purchased in addition to the regular non-resident angling licence and will cost $3 (Canadian) a day.

The tags will be available from the province's official licence issuers in the northwestern Ontario border waters area in time for the May 18 start-up of the walleye season in northwestern Ontario.

Ontario has introduced the Border Waters Angling Validation Tag to:

- conserve the fisheries resource in the border waters area;
- provide a stimulus to the Ontario-based tourist industry by improving fishing quality and reducing relative costs of Ontario-based accommodation;
- provide an effective way of identifying and monitoring how many non-resident anglers use the border waters fishery, in the event that future conservation and/or management efforts are required.

Background

For several years, there has been concern about overfishing in the border waters lying between Ontario and Minnesota. The two governments recently collaborated on a fisheries atlas of the area, the *Minnesota-Ontario Boundary Waters Fisheries Atlas for Lake of the Woods, Rainy Lake and Rainy River*, published in July 1984.

The atlas was compiled by the Ontario Ministries of Natural Resources, Tourism and Recreation and Northern Affairs, in co-operation with the Minnesota Department of Natural Resources. The atlas revealed some interesting data, some of which is provided in the following paragraphs.

The importance of Ontario's border waters fishery

- Northwestern Ontario's border waters---Rainy River, Rainy Lake and Lake of the Woods---are two of the major non-resident tourist fisheries in the province, together supporting more than 10 per cent of all non-resident angling in Ontario.
- More than 35,000 Ontario residents---many of them sports anglers---live adjacent to Lake of the Woods and Rainy Lake.
- The Ontario portions of these waters also support 45 commercial fishing and 130 tourist accommodation operations.
- Of 17 Indian Bands living on or near the waters, most hold commercial fishing licences.

EXHIBIT 2

Over-harvesting of the border waters

Lake of the Woods

- In Ontario's central sector of Lake of the Woods, the walleye harvest (145,000 pounds) is 40,000 pounds above the target; the northern pike harvest (84,000 pounds) is 9,000 pounds over the target.
- In Ontario's southern sectors, the current walleye harvest (342,000 pounds) is 50,000 pounds over the target.
- In the same sectors, the northern pike harvest (243,000 pounds) is 35,000 pounds over the target.
- In two of the south sectors of the lake—South Sector 5 and South Sector 6—anglers based in the U.S. account for almost 50 per cent of all fishing activity.

Rainy Lake

- The walleye population in the north arm is well below its potential and needs to be rehabilitated.
- In the north arm, northern pike are being harvested at high levels, but appear stable, and smallmouth bass and crappies are stable at the present levels of harvest.
- Walleye stocks in Redgut Bay are being over-harvested, but are stable; northern pike are under-harvested; and both smallmouth bass and crappie are stable.
- The south arm contains one walleye stock common to Ontario and Minnesota that is recovering from over-harvesting, but needs protection.
- Further, in the south arm, northern pike stocks are stable; bass appear to be increasing; crappies are limited in distribution, and whitefish stocks are in good condition.
- In two separate Ontario sectors of the lake—Redgut Bay and the south arm—U.S.-based fishermen account for 43 and 84 per cent respectively of all fishing activity.

Summary

- Walleye and northern pike are being over-harvested in the central and southern sectors of Lake of the Woods.
- Walleye are well below potential in the north arm of Rainy Lake.
- Ontario waters are being heavily utilized by anglers based in the U.S., with the economic benefits from these Ontario fisheries mainly being directed to Minnesota.
- It is important to conserve these valuable border water fisheries for the present and future benefits of Ontario.
- The new Border Waters Angling Validation Tag is designed to promote conservation of the fishery in these waters as well as to enhance the way it is managed.

EXHIBIT 3

ITION

RESIDENTIAL

Lake of the Woods

recent Amendment to t Ontario Fishery Regulatio

ovides that:

1.1 (1) Notwithstanding tion 11 where a non-resident is angling from a boat in the waters of Lake Erie or Lake of the Woods with two or more other persons who are angling from that boat, the aggregate number of yellow Pickerel that may be taken and possessed by such per

residents is eighteen.

(2) Where the aggregate number of yellow Pickerel possessed exceeds the number referred to in sub-section 1, each non-resident angling from the boat is guilty of an offence.

THIS SIMPLY MEANS THAT ANY SINGLE BOAT FROM WHICH NON-RESIDENTS ARE ANGLING CANNOT CONTAIN MORE THAN 18 YELLOW PICKEREL (WALLEYE) TAKEN BY SUCH NON-RESIDENTS

apply to residents that may be fishing in the same boat.

boat will be considered as a residence unless fishing is p directly from the Houseboat.

ulation does not affect the general limit of six yellow Pickerel (Walleye) per person in your possession in your residence, cottage or resort.

information, contact the nearest Ministry of Natural Resources Office.

Ministry of Natural Resources
Ontario

EXHIBIT 4

Your file:

Our file: 3-1-0

Box 5080
Kenora, Ontario
P9N 3X3

807-468-9841

1982.03.12

Mr. Barry Westerlund
Box 582
BAUDETTE, MN.
U.S.A. 56623

Dear Mr. Westerlund:

In response to your recent letter concerning Lake of the Woods, I will try to present as simply as possible the problems we face, and our management actions.

1. The walleye in the Ontario portion of Lake of the Woods are for the most part discrete stocks of fish that can be managed separately by Ontario.

2. The estimated harvest of walleye that can be allowed on the Ontario waters is 800,000 pounds.

3. We have cut our commercial fishery in half from the 1960's to 325,000 pounds by quotas.

4. Our angling fishery takes 650,000 pounds of walleye. About 75% of this is by non-residents - much of it through our tourist industry.

5. The charter boat industry operating out f Minnesota takes about 50,000 pounds or more of walleye they estimate 30,000 pounds) out of Ontario waters. There is little or no return to Ontario from the use of this resource.

6. We have a stressed fishery that needs to have the harvest further reduced and this will come from the areas that provide the least economic benefit to Ontario.

7. It is our intention to eliminate the charter boat industry from Ontario waters. The 18 fish boat limit was expected to do this. It appears that it will not eliminate the fishery because the fishery appears to have increased its illegal activities, ie. overlimits of fish. The 18 fish boat limit

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7. con't.

does not affect the normal fishing operations (ie. 2 - 3 anglers/boat) and if there is 4 or 5 people out for some recreation, then 18 fish is still believed adequate. We are selling recreational opportunity, not fish.

8. Ontario welcomes tourists and would prefer, naturally, that they spend as much money as possible here. Tourism is very important in our economy and is being promoted. There are no plans to force tourists through the tourist industry. Non-residents are welcome to stay at tourist lodges, camps, camp on Crown land or just come for a day's fishing.

9. Every non-resident regardless of where they stay is governed by the 18/fish/day.

10. We intend to continue efforts to eliminate the charter boat industry and all illegal fishing by residents and non-residents. How this will be done is unclear at this time, but that is our objective.

11. We will not be making further reductions in our commercial fishery, our resident recreational fishery, or our economically important non-resident recreational fishery until fisheries of no benefit to Ontario are eliminated.

I trust this summary outlines our position. I think it is clear that our objective is elimination of the charter boat industry, but the methodology may provide some inconvenience to other fishermen as a consequence. We hope that such effects will be minimal.

Yours truly

D. B. McGregor
District Manager.

G. K. Winterton:el

218-634-2836

EXHIBIT 5

LAKE OF THE WOODS COUNTY
OFFICE OF THE COUNTY AUDITOR

CHARLES F. GOSEN
BOX 808
BAUDETTE, MN 56623

ECONOMIC DATA ON LAKE OF THE WOODS
RE: RESORT AREA BETWEEN BAUDETTE AND ZIPPEL BAY

25 Resorts
35 Launches for sport fishing in 1985 - 51 were in use in 1982, (decline of 31%)

One marina, two motels, two retail bait tackle businesses, two wholesale bait dealers, and one wholesale tackle dealer.

The 25 resorts employed 511 people in 1982 (not including owner-operator) - 351 in 1985 a decline of 31.3%.

The 25 resorts can accomodate 1300 guests.

They occupy 3% of the County Land and they pay 24% of the total county real estate tax.

The population of Lake of the Woods County is 3925

In 1982 the County sold a total of $183,342.50 in fishing licenses of this the resorters sold $115,542.50. In 1984 the County sold $159,348.50 and the resorters sold $99,202.50. (a decline of 13% county wide and 14% on resort sales)

Travel expenditures in the County totaled $17,699,000 for 1982

The 1985 total estimated market value of the entire county is $111,611,750. The 1985 estimated market value of the lodging facilities is $6,526,000.

(source Resort Association 1982 & 1985, U.S. Travel Data Center & County of Lake of the Woods)

EXHIBIT 6

BOUNDARIES, SLAVE TRADE, EXTRADITION (WEBSTER-ASHBURTON TREATY)

Treaty signed at Washington August 9, 1842
Senate advice and consent to ratification August 20, 1842
Ratified by the President of the United States August 22, 1842
Ratified by the United Kingdom October 5, 1842
Ratifications exchanged at London October 13, 1842
Entered into force October 13, 1842
Proclaimed by the President of the United States November 10, 1842
Article X supplemented April 4, 1890, by convention of July 12, 1889 [1]
Article X terminated June 24, 1935, by treaty of December 22, 1931, [2]
except as to Canada, the Irish Free State, New Zealand, and South Africa [3]

8 Stat. 572; Treaty Series 119 [4]

A TREATY TO SETTLE AND DEFINE THE BOUNDARIES BETWEEN THE TERRITORIES OF THE UNITED STATES AND THE POSSESSIONS OF HER BRITANNIC MAJESTY IN NORTH AMERICA FOR THE FINAL SUPPRESSION OF THE AFRICAN SLAVE-TRADE, AND FOR THE GIVING UP OF CRIMINALS, FUGITIVE FROM JUSTICE, IN CERTAIN CASES

Whereas, certain portions of the line of boundary between the United States of America and the British Dominions in North America, described in the second article of the Treaty of Peace of 1783,[5] have not yet been ascertained and determined, notwithstanding the repeated attempts which have been heretofore made for that purpose; and whereas, it is now thought to be for the interest of both parties that, avoiding further discussion of their respective rights arising, in this respect, under the said Treaty, they should agree on a conventional line in said portions of the said boundary, such as may be convenient to both parties, with such equivalents and compensations as are deemed just and reasonable; and whereas, by the treaty concluded at Ghent, on the 24th day of December, 1814,[6] between the United States

[1] TS 139, *post*, p. 211.
[2] TS 849, *post*, p. 482.
[3] Terminated for South Africa Apr. 30, 1951, by treaty of Dec. 18, 1947 (TIAS 2243, *ante*, vol. 11, p. 512, SOUTH AFRICA).
[4] For a detailed study of this treaty, see 4 Miller 365.
[5] Treaty signed at Paris, Sept. 3, 1783 (TS 104, *ante*, p. 9).
[6] TS 109, *ante*, p. 41.

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lowing tenor, viz: "Art. IV. [illegible]
with the principles of humanity and justice; and whereas, both His Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object;" and whereas, notwithstanding the laws which have at various times been passed by the two Governments, and the efforts made to suppress it, that criminal traffic is still prosecuted and carried on; and whereas, the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland are determined that, so far as may be in their power, it shall be effectually abolished; and whereas, it is found expedient for the better administration of justice and the prevention of crime within the territories and jurisdiction of the two parties, respectively, that persons committing the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up: The United States of America and Her Britannic Majesty, having resolved to treat on these several subjects, have for that purpose appointed their respective Plenipotentiaries to negotiate and conclude a treaty; that is to say, the President of the United States has, on his part, furnished with full powers Daniel Webster, Secretary of State of the United States, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland has, on her part, appointed the Right Honorable Alexander Lord Ashburton, a Peer of the said United Kingdom, a member of Her Majesty's most honorable Privy Council, and Her Majesty's Minister Plenipotentiary on a special mission to the United States, who, after a reciprocal communication of their respective full powers, have agreed to and signed the following articles:

ARTICLE I

It is hereby agreed and declared that the line of boundary shall be as follows: Beginning at the monument at the source of the river St. Croix, as designated and agreed to by the Commissioners under the fifth article of the treaty of 1794,[1] between the Governments of the United States and Great Britain; thence north, following the exploring line run and marked by the surveyors of the two Governments in the years 1817 and 1818, under the fifth article of the treaty of Ghent, to its intersection with the river St. John, and to the middle of the channel thereof; thence up the middle of the main channel of the said river St. John to the mouth of the St. Francis; thence up the middle of the channel of the said river St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence southwesterly, in a straight line, to a point on the northwest branch of the river St. John, which point shall be ten miles distant from the main branch of

[1] Treaty signed at London, Nov. 19, 1794 (TS 105, *ante*, p. 13).

the St. John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the river St. Lawrence from those which fall into the river St. John, then the said point shall be made to recede down the said northwest branch of the river St. John to a point seven miles in a straight line from the said summit or crest; thence in a straight line, in a course about south eight degrees west, to the point where the parallel of latitude of 46° 25′ north intersects the southwest branch of the St. John's; thence southerly, by the said branch, to the source thereof, in the highlands, at the Metjarmette Portage; thence down along the said highlands which divide the waters which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean to the head of Hall's Stream; thence down the middle of said stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins previously to the year 1774, as the 45th degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British Province of Canada on the other; and, from said point of intersection west, along the said dividing line as heretofore known and understood, to the Iroquois, or St. Lawrence River.

ARTICLE II

It is moreover agreed that from the place where the joint Commissioners terminated their labors under the sixth article of the Treaty of Ghent, to wit: at a point in the Neebish Channel, near Muddy Lake, the line shall run into and along the ship channel between St. Joseph and St. Tammany Islands, to the division of the channel at or near the head of St. Joseph's Island; thence turning eastwardly and northwardly, around the lower end of St. George's or Sugar Island, and following the middle of the channel which divides St. George's from St. Joseph's Island; thence up the east Neebish Channel, nearest to St. George's Island, through the middle of Lake George; thence west of Jonas Island, into St. Mary's River, to a point in the middle of that river, about one mile above St. George's or Sugar Island, so as to appropriate and assign the said island to the United States; thence adopting the line traced on the maps by the Commissioners, through the river St. Mary and Lake Superior, to a point north of Ile Royale in said lake, one hundred yards to the north and east of Ile Chapeau, which last mentioned island lies near the northeastern point of Ile Royale, where the line marked by the Commissioners terminates; and from the last mentioned point, southwesterly, through the middle of the sound between Ile Royale and the northwestern mainland, to the mouth of Pigeon River, and up the said river to and through the north and south Fowl Lakes to the lakes of the height of land between Lake Superior and the Lake of the Woods; thence along the water

communication to Lake Saisaginaga, and through that lake; thence to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermillion Lake, and Lake Namecan, and through the several smaller lakes, straits, or streams connecting the lakes here mentioned to that point in Lac la Pluie or Rainy Lake, at the Chaudière Falls, from which the Commissioners traced the line to the most northwestern point of the Lake of the Woods; thence along the said line to the said most northwestern point, being in latitude 49° 23′ 55″ north, and in longitude 95° 14′ 38″ west from the observatory at Greenwich; thence, according to existing treaties, due south, to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains. It being understood that all the water communications and all the usual portages along the line, from Lake Superior to the Lake of the Woods, and also Grand Portage, from the shore of Lake Superior to the Pigeon River, as now actually used, shall be free and open to the use of the citizens and subjects of both countries.

ARTICLE III

In order to promote the interests and encourage the industry of all the inhabitants of the countries watered by the river St. John and its tributaries, whether living within the State of Maine or the Province of New Brunswick, it is agreed that, where, by the provisions of the present treaty, the river St. John is declared to be the line of boundary, the navigation of the said river shall be free and open to both parties, and shall in no way be obstructed by either; that all the produce of the forest in logs, lumber, timber, boards, staves, or shingles, or of agriculture, not being manufactured, grown on any of those parts of the State of Maine watered by the river St. John, or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have free access into and through the said river and its said tributaries, having their source within the State of Maine, to and from the seaport at the mouth of the said river St. John's, and to and round the Falls of the said river, either by boats, rafts, or other conveyance; that when within the Province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said Province; that in like manner the inhabitants of the territory of the upper St. John determined by this treaty to belong to Her Britannic Majesty, shall have free access to and through the river for their produce, in those parts where the said river runs wholly through the State of Maine: Provided always, that this agreement shall give no right to either party to interfere with any regulations not inconsistent with the terms of this treaty which the Governments, respectively, of Maine or of New Brunswick may make respecting the navigation of the said river, where both banks thereof shall belong to the same party.

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ARTICLE IV

All grants of land heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made: And all equitable possessory claims, arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall, in like manner, be deemed valid, and be confirmed and quieted by a release to the person entitled thereto, of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them respectively, which has heretofore been in dispute between them.

ARTICLE V

Whereas, in the course of the controversy respecting the disputed territory on the northeastern boundary, some moneys have been received by the authorities of Her Britannic Majesty's province of New Brunswick, with the intention of preventing depredations on the forests of the said territory, which moneys were to be carried to a fund, called the "Disputed Territory Fund," the proceeds whereof, it was agreed, should be hereafter paid over to the parties interested, in the proportions to be determined by a final settlement of boundaries; it is hereby agreed that a correct account of all receipts and payments on the said fund shall be delivered to the Government of the United States within six months after the ratification of this treaty; and the proportion of the amount due thereon to the States of Maine and Massachusetts, and any bonds or securities appertaining thereto, shall be paid and delivered over to the Government of the United States; and the Government of the United States agrees to receive for the use of, and pay over to the States of Maine and Massachusetts, their respective portions of said fund: and further, to pay and satisfy said States, respectively, for all claims for expenses incurred by them in protecting the said heretofore disputed territory, and making a survey thereof in 1838; the Government of the United States agreeing with the States of Maine and Massachusetts to pay them the further sum of three hundred thousand dollars, in equal moieties, on account of their assent to the line of boundary described in this treaty, and in consideration of the conditions and equivalents received therefor from the Government of Her Britannic Majesty.

ARTICLE VI

It is furthermore understood and agreed that, for the purpose of running and tracing those parts of the line between the source of the St. Croix and the St. Lawrence River, which will require to be run and ascertained, and for marking the residue of said line by proper monuments on the land, two Commissioners shall be appointed, one by the President of the United States, by and with the advice and consent of the Senate thereof, and one by Her Britannic Majesty; and the said Commissioners shall meet at Bangor, in the State of Maine, on the first day of May next, or as soon thereafter as may be, and shall proceed to mark the line above described, from the source of the St. Croix to the river St. John; and shall trace on proper maps the dividing line along said river, and along the river St. Francis to the outlet of the Lake Pohenagamook; and from the outlet of the said lake they shall ascertain, fix, and mark, by proper and durable monuments on the land, the line described in the first article of this treaty; and the said Commissioners shall make to each of their respective Governments a joint report or declaration, under their hands and seals, designating such line of boundary, and shall accompany such report or declaration with maps certified by them to be true maps of the new boundary.

ARTICLE VII

It is further agreed that the channels in the river St. Lawrence, on both sides of the Long Sault Islands and of Barnhart Island; the channels in the river Detroit, on both sides of the Island Bois Blanc, and between that island and both the American and Canadian shores; and all the several channels and passages between the various islands lying near the junction of the river St. Clair with the lake of that name, shall be equally free and open to the ships, vessels, and boats of both parties.

ARTICLE VIII

The parties mutually stipulate that each shall prepare, equip, and maintain in service, on the coast of Africa, a sufficient and adequate squadron, or naval force of vessels, of suitable numbers and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws, rights, and obligations of each of the two countries, for the suppression of the slave trade; the said squadrons to be independent of each other, but the two Governments stipulating nevertheless to give such orders to the officers commanding their respective forces as shall enable them most effectively to act in concert and co-operation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this article; copies of all such orders to be communicated by each Government to the other respectively.

ARTICLE IX

Whereas, notwithstanding all efforts which may be made on the coast of Africa for suppressing the slave trade, the facilities for carrying on that traffic and avoiding the vigilance of cruisers by the fraudulent use of flags, and other means, are so great, and the temptations for pursuing it, while a market can be found for slaves, so strong, as that the desired result may be long delayed, unless all markets be shut against the purchase of African negroes, the parties to this treaty agree that they will unite in all becoming representations and remonstrances, with any and all Powers within whose dominions such markets are allowed to exist; and that they will urge upon all such Powers the propriety and duty of closing such markets effectually, at once, and forever.

ARTICLE X[a]

It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them or their Ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other: provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE XI

The eighth article of this treaty shall be in force for five years from the date of the exchange of the ratifications, and afterwards until one or the other party shall signify a wish to terminate it. The tenth article shall continue in

ARTICLE XII

The present Treaty shall be duly ratified, and the mutual exchange of ratifications shall take place in London within six months from the date hereof, or earlier if possible.

In faith whereof we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done, in duplicate, at Washington, the ninth day of August, anno Domini one thousand eight hundred and forty-two.

DANL. WEBSTER [SEAL]
ASHBURTON [SEAL]

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[a] For a supplement to art. X, see convention of July 12, 1889 (TS 139), *post*, p. 211. Art. X was terminated June 24, 1935, by treaty of Dec. 22, 1931 (TS 849, *post*, p. 482), except as to Canada, the Irish Free State, New Zealand, and South Africa; terminated for South Africa Apr. 30, 1951 (see footnote 3, p. 82).

EXHIBIT 7

January 11, 1909

Treaty between the United States and Great Britain relating to boundary waters between the United States and Canada. Signed at Washington, January 11, 1909; ratification advised by the Senate, March 3, 1909; ratified by the President, April 1, 1910; ratified by Great Britain, March 31, 1910; ratifications exchanged at Washington, May 5, 1910; proclaimed, May 13, 1910.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WATER BOUNDARY WITH CANADA. PREAMBLE

Whereas a Treaty between the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, was concluded and signed by their respective Plenipotentiaries at Washington on the eleventh day of January, one thousand nine hundred and nine, the original of which Treaty is word for word as follows:

CONTRACTING POWERS

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends, and for that purpose have appointed as their respective plenipotentiaries:

PLENIPOTENTIARIES

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Britannic Majesty, the Right Honorable James Bryce, O. M., his Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

PRELIMINARY ARTICLE

BOUNDARY WATERS DEFINED

For the purposes of this treaty boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

ARTICLE I

NAVIGATION FREE TO BOTH COUNTRIES

The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

LAKE MICHIGAN AND ALL CONNECTING CANALS INCLUDED

It is further agreed that so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be constructed on either side of the line. Either of the High Contracting Parties may adopt rules and regulations governing the use of such canals within its own territory and may charge tolls for the use thereof, but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the High Contracting Parties and the ships, vessels, and boats of both of the High Contracting Parties, and they shall be placed on terms of equality in the use thereof.

Article II

CONTROL OVER WATERS CROSSING BOUNDARY, ETC., RETAINED

Each of the High Contracting Parties reserves to itself or to the several State Governments on the one side and the Dominion or Provincial Governments on the other as the case may be, subject to any treaty provisions now existing with respect thereto, the exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channel of such waters on either side of the boundary, resulting in any injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs: but this provision shall not apply to cases already existing or to cases expressly covered by special agreement between the parties hereto.

NAVIGATION NOT TO BE INJURED

It is understood, however, that neither of the High Contracting Parties intends by the foregoing provision to surrender any right which it may have, to object to any interference with or diversions of waters on the other side of the boundary the effect of which would be productive of material injury to the navigation interests on its own side of the boundary.

Article III

FURTHER DIVERSIONS, ETC., SUBJECT TO SPECIAL AGREEMENT

POST, P.3481

It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line, shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.

GOVERNMENT WORKS FOR HARBORS, ETC

The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States on the one side and the Government of the Dominion of Canada on the other, to undertake and carry on governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbors, and other governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes.

Article IV

CONSENT FOR DAMS, ETC., ALTERING WATER LEVELS

The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of hich is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

POLLUTING BOUNDARY WATERS FORBIDDEN

It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

Article V

NIAGARA RIVER—DIVERSION OF WATERS LIMITED

The High Contracting Parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish this object with the least possibly injury to investments which have already been made in the construction of power plants on the United States side of the river under grants of authority from the State of New York, and on the Canadian side of the river under licenses authorized by the Dominion of Canada and the Province of Ontario.

USE ABOVE THE FALLS

So long as this treaty shall remain in force, no diversion of the waters of the Niagara River above the Falls from the natural course and stream thereof shall be permitted except for the purposes and to the extent hereinafter provided.

BY UNITED STATES

The United States may authorize and permit the diversion within the State of New York of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of twenty thousand cubic feet of water per second.

BY CANADA

The United Kingdom, by the Dominion of Canada, or the Province of Ontario, may authorize and permit the diversion within the Province of Ontario of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of thirty-six thousand cubic feet of water per second.

USE FOR NAVIGATION, ETC., NOT AFFECTED

The prohibitions of this article shall not apply to the diversion of water for sanitary or domestic purposes, or for the service of canals for the purposes of navigation.

ARTICLE VI

ST. MARY AND MILK RIVERS—APPORTIONMENT OF WATERS FOR IRRIGATION BY UNITED STATES AND CANADA

The High Contracting Parties agree that the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the Provinces of Alberta and Saskatchewan) are to be treated as one stream for the purposes of irrigation and power, and the waters thereof shall be apportioned equally between the two countries, but in making such equal apportionment more than half may be taken from one river and less than half from the other by either country so as to afford a more beneficial use to each. It is further agreed that in the division of such waters during the irrigation season, between the 1st of April and 31st of October, inclusive, annually, the United States is entitled to a prior appropriation of 500 cubic feet per second of the waters of the Milk River, or so much of such amount as constitutes three-fourths of its natural flow, and that Canada is entitled to a prior appropriation of 500 cubic feet per second of the flow of St. Mary River, or so much of such amount as constitutes three-fourths of its natural flow.

DIVERSION OF ST. MARY RIVER—*ANTE*, P. 2449

The channel of the Milk River in Canada may be used at the convenience of the United States for the conveyance, while passing through Canadian territory, of waters diverted from the St. Mary River. The provisions of Article II of this treaty shall apply to any injury resulting to property in Canada from the conveyance of such waters through the Milk River.

MEASUREMENT BY RECLAMATION AND IRRIGATION OFFICERS

The measurement and apportionment of the water to be used by each country shall from time to time be made jointly by the properly constituted reclamation officers of the United States and the properly constituted irrigation officers of His Majesty under the direction of the International Joint Commission.

ARTICLE VII

INTERNATIONAL JOINT COMMISSION ESTABLISHED
Ante, p. 706

The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada composed of six commissioners, three on the part of the United States appointed by the President thereof, and three on the part of the United Kingdom appointed by his Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

ARTICLE VIII

JURISDICTION, ETC., *ANTE*, PP. 2449, 2450—PRINCIPLES DECLARED

This International Joint Commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters with respect to which under Articles III and IV of this treaty the approval of this Commission is required, and in passing upon such cases the Commission shall be governed by the following rules or principles which are adopted by the High Contracting Parties for this purpose:

MUTUAL RIGHTS

The High Contracting Parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters herein before defined as boundary waters.

PRECEDENCE OF USES

The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

(1) Uses for domestic and sanitary purposes;

(2) Uses for navigation, including the services of canals for the purposes of navigation;

(3) Uses for power and for irrigation purposes.

The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.

TEMPORARY DIVERSIONS

The requirement for an equal diversion may in the discretion of the Commission be suspended in cases of temporary diversions along boundary waters at points where such equal division can not be made advantageously on account of local conditions, and where such diversion does not diminish elsewhere the amount available for use on the other side.

COMPENSATING REMEDIAL WORKS

The Commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of any interests on either side of the boundary.

CHANGES IN WATER LEVELS

In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters or in waters flowing therefrom or in waters below the boundary in rivers flowing across the boundary, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

DECISIONS OF COMMISSION

The majority of the Commissioners shall have power to render a decision. In case the Commission is evenly divided upon any question or matter presented to it for decision, separate reports shall be made by the Commissioners on each side to their own Government. The High Contracting Parties shall thereupon endeavor to agree upon an adjustment of the question or matter of difference, and if an agreement is reached between them, it shall be reduced to writing in the form of a protocol, and shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

ARTICLE IX

REFERENCE OF FUTURE QUESTIONS

The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.

REPORTS BY COMMISSION

The International Joint Commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

EFFECT OF REPORTS

Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

SUBMISSION OF REPORTS

The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

DIVIDED DECISIONS

In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side of their own Government.

Article X

SUBMISSION OF DISPUTES TO COMMISSION, AUTHORITY OF COMMISSION

Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor General in Council. In each case so referred, the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

DECISIONS

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

REFERENCY TO UMPIRE OF UNDECIDED QUESTIONS, ANTE, P. 2333

If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth, and sixth paragraphs of Article XLV of The Hague Convention for the pacific settlement of international disputes, dated October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree.

Article XI

TRANSMISSIONS OF DECISIONS AND REPORTS

A duplicate original of all decisions rendered and joint reports made by the Commission shall be transmitted to and filed with the Secretary of State of the United States and the Governor General of the Dominion of Canada, and to them shall be addressed all communications of the Commission.

Article XII

ORGANIZATION AND MEETINGS OF COMMISSION

The International Joint Commission shall meet and organize at Washington promptly after the members thereof are appointed, and when organized the Commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction by the two Governments. Each Commissioner, upon the first joint meeting of the Commission after his appointment, shall, before proceeding with the work of the Commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this treaty, and such declaration shall be entered on the records of the proceedings of the Commission.

PERSONNEL, PAYMENT OF EXPENSES—ANTE, PP. 766, 1364

The United States and Canadian sections of the Commission may each appoint a secretary, and these shall act as joint secretary of the Commission at its joint sessions, and the Commission may employ engineers and clerical assistants from time to time as it may deem advisable. The salaries and personal expenses of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the Commission, incurred by it, shall be paid in equal moieties by the High Contracting Parties.

EXTENT OF AUTHORITY

The Commission shall have power to administer oaths to witnesses, and to take evidence on oath whenever deemed necessary in any proceeding, or inquiry, or matter within its jurisdiction under this treaty, and all parties interested therein shall be given convenient opportunity to be heard, and the High Contracting Parties agree to adopt such legislation as may be appropriate and necessary to give the Commission the powers above mentioned on each side of the boundary, and to provide for the issue of subpoenas and for compelling the attendance of witnesses in proceedings before the Commission. The Commission may adopt such rules of procedure as shall be in accordance with justice and equity, and may make such examination in person and through agents or employees as may be deemed advisable.

ARTICLE XIII

SPECIAL AGREEMENTS DESCRIBED

In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing articles, such agreements are understood and intended to include not only direct agreements between the High Contracting Parties, but also any mutual arrangement between the United States and the Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

ARTICLE XIV

EXCHANGE OF RATIFICATIONS, DURATION, AND SIGNATURES

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange of its ratifications. It shall remain in force for five years, dating from the day of exchange of ratifications, and thereafter until terminated by twelve months' written notice given by either High Contracting Party to the other.

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 11th day of January, in the year of our Lord one thousand nine hundred and nine.

JAMES BRYCE [SEAL]
ELIHU ROOT [SEAL]

CONSENT OF UNITED STATES SENATE

And whereas the Senate of the United States by their resolution of March 3, 1909, (two-thirds of the Senators present concurring therein) did advise and consent to the ratification of the said Treaty with the following understanding, to-wit:

RESOLUTION—FORT, P. 2485

"Resolved further, as a part of this ratification, That the United States approves this treaty with the understanding that nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's river at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's river, within its own territory, and further, that nothing in this treaty shall be construed to interfere with the drainage of wet swamp and overflowed lands into streams flowing into boundary waters, and that this interpretation will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will in effect, form part of the treaty;"

RATIFICATION

And whereas the said understanding has been accepted by the Government of Great Britain, and the ratifications of the two Governments of the said treaty were exchanged in the City of Washington, on the 5th day of May, one thousand nine hundred and ten;

PROCLAMATION

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said treaty and the said understanding, as forming a part thereof, to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this thirteenth day of May in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States of America the one hundred and thirty-fourth.

[SEAL] WM H TAFT

By the President:
P C KNOX
Secretary of State.

PROTOCOL OF EXCHANGE

PROTOCOL OF EXCHANGE OF RATIFICATIONS, *ante* p. 2664

On proceeding to the exchange of the ratifications of the treaty signed at Washington on January 11, 1909, between the United States and Great Britain, relating to boundary waters and questions arising along the boundary between the United States and the Dominion of Canada, the undersigned plenipotentiaries, duly authorized thereto by their respective Governments, hereby declare that nothing in this treaty shall be construed as affecting, or changing, any existing territorial, or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's River at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's River, within its own territory; and further, that nothing in this treaty shall be construed to interfere with the drainage of wet, swamp, and overflowed lands into streams flowing into boundary waters, and also that this declaration shall be deemed to have equal force and effect as the treaty itself and to form an integral part thereto.

The exchange of ratifications then took place in the usual form.

IN WITNESS WHEREOF, they have signed the present Protocol of Exchange and have affixed their seals thereto.

DONE at Washington this 5th day of May, one thousand nine hundred and ten.

PHILANDER C KNOX [SEAL]
JAMES BRYCE [SEAL]

Senator DURENBERGER. We have the panel of four people and then we have other people that want to be heard, and I know—let's see. First is Mike Trueman, president of the Minnesota Border Lakes Coalition; Nancy Lakner, the president of the Boundary Waters Canoe Outfitters Association; George Scott, president of the Border Lakes Association, Arthur Eggen, vice president of the Minnesota Arrowhead Association; and I know others have asked to be heard. Irv Anderson in his capacity as Citizen's Council on Voyageurs National Park. And we are going to set up—or set back up the microphone down here so that Irv and the gentleman who said he wanted to say something and anybody else who wants to say anything can do that. But, first, can we get Mike Trueman, Nancy Lakner, George Scott, and Arthur Eggen to come up.

And let me suggest that I'm aware of the fact that you all have a great deal you could say to this audience. This particular audience is probably steeped in the issues. If you will make your full statement part of the record and try to limit your oral statements to 5 minutes. If that's possible, it would be helpful. So we will start in the order you were introduced. Mike Trueman is first.

TESTIMONY OF MICHAEL TRUEMAN, PRESIDENT, MINNESOTA BORDER LAKES COALITION; GEORGE SCOTT, PRESIDENT, BORDER LAKES ASSOCIATION; AND ARTHUR EGGEN, VICE PRESIDENT, MINNESOTA ARROWHEAD ASSOCIATION.

Mr. TRUEMAN. Thank you, Senator. My remarks will be addressed specifically to Lake of the Woods.

In May 1980, the Ministry of Natural Resources imposed a per boat limit of 18 walleyes for all non-residents. Now, I understand that periodically, due to mother nature's windy ways, American-based tourist operations use larger boats in Lake of the Woods to cross 20 to 30 miles of open water for island protection. The Ontario camps do not need or use these larger crafts. Consequently, the 18 fish law was imposed directly against the American-based tourist operators.

On November 4, 1981, four members of the Lake of the Woods Resort Association from the Baudette area met with the Ontario Ministry Officials in Kenora. They discussed the future regulations that were being rumored at that time. They were told in part by Mr. Guy Winterton, a ministry official, that, "We are going to put you out of business and you don't have a leg to stand on."

In a letter dated March 12, 1982, addressed to Baudette businessman Barry Westerlund from Kenora ministry official and district manager, D. B. McGregor, in explaining the reason for the 18 fish law, McGregor states, and I will quote, "It is our intention to eliminate the charter boat industry from Ontario waters. The 18 fish per boat limit was expected to do this."

In May 1985, the ministry imposed a $3 dollar per person per day user fee. That user fee pertains to all non-residents or all non-Canadians. Non-residents staying in a Canadian camp, of course, were exempt from such a fee.

In the last 5 years, we have had customs and immigrations problems along with the recent establishment of a new provincial park

in Lake of the Woods which is rumored to further restrict American tourists.

These Ontario regulations and restrictions are all said to be in the name of Resource Management and Conservation and can be summed up in D. B. McGregor's letter of March 12 when he states, "We have a stressed fishery that needs to have the harvest further reduced, and this will come from the areas that provide the least economic benefit to Ontario."

Now, in the Rainy River Record, dated December 22, 1977, they published an article entitled, "A Comprehensive Look at the Lake of the Woods Fishery." This report was released by the ministry on December 13, 1977, out of Kenora office. This report states in part, and I will quote,

> The potential annual sustained yield of walleye in the Ontario portion of Lake of the Woods is 797,760 pounds. During a 1960 to 1969 period, the commercial fishery took 650,000 pounds of walleye annually and the anglers 550 to 800,000 pounds of walleye, for a total of 1.2 to 1.45 million pounds. The fishery of the seventies is showing this stress. While the commercial fishery has taken over a million pounds in years past, from 1972 to 1976 the commercial catch has been 500,000 pounds to 550,000 pounds. The additional 500 to 600,000 pounds taken by angling brings the total to over a million pounds, still surpassing the sustainable yield of 797,760 pounds. In 1977, though, the commercial catch alone has increased to about 900,000 pounds with another 500,000 pounds in the angling catch.

Now, from Ontario's own report, these figures show that Ontario alone has raped their own resource. After all, if you're going to take within a 10-year period in excess of 5 million pounds over your stated quota, you're certainly not helping the fisheries.

So the Americans and the anti-American regulations that were imposed by the Ministry is nothing more, as far as we are concerned, than a scape goat for their own poor fish management policies.

Now, obviously, I'm pointing a finger at Ontario's Ministry of Natural Resources strictly because that these people were allowed to impose regulations against American businesses in Lake of the Woods County and create significant financial hardships to our tourist industry. However, what the commission or committee, this committee needs to understand and recognize is that these regulations should have never been allowed.

The ground rules for these border waters are written in the treaties. The treaties were written in simple terminology and were simply understood. Although modern day usage has changed from 1842 and 1909, the definitions of the words and phrases certainly have not. Phrases like, "Forever continue free and open," "Both countries equally," "Use and enjoyment," "Applying equally and without discrimination." These terms and phrases are still understood by border residents to be the rule.

Now, the Ministry of Natural Resources, in our estimation, is a prime example of a bureaucracy on these border waters that is out of control. They answer to no one with no one taking responsibility for their actions. As other governments and special interest groups have done on the border, they continue to impose regulations for self-serving interests, and this is all being done without regard to treaty language or treaty intent.

We need an instrument to be put in place to govern or rule on any and all border water regulations with the existing treaties as the guideline.

You know, these United States were founded and they are now policed and governed by a Constitution with a terminology that is over 200 years old, and the terminology of that Constitution is still good today. On these border waters, those treaties are our constitution, and we need our American rights protected. Thank you.

Senator DURENBERGER. Thank you, Mike.

George.

Mr. SCOTT. Mr. Chairman and colleagues, my name is George Scott. I'm president of the Border Lakes Association and a lifelong resident of Crane Lake, MN, located on the United States-Canadian border. The Border Lakes Association was established over 30 years ago, and its members are Minnesota residents who live along the U.S.-Canadian border. The purpose of the association is to promote and conserve the general welfare and interests of the communities and riparian owners affected by the levels, flows, and utilization of the waters in the Rainy Lake watershed in the state of Minnesota. The Rainy Lake watershed includes a majority of the boundary waters separating Minnesota and Ontario.

The Association will be holding its annual meeting next month, and at that time, will consider the proposal to establish the Boundary Water International Commission. So the comments I'm making today do not reflect the formal position of the Association.

The Association agreed at its last annual meeting to help sponsor an assessment on the boundary waters issues along the Minnesota-Ontario border. The assessment was done by Don Parmeter completed in May of this year, and I think it represents an excellent overall view of the problems existing along the border, the reasons for those problems, and some practical solutions.

It seems to me that the main reason we have so many border problems is that there are so many players, and they are all playing by their own separate rules. When you have 20 Government agencies making different rules on the same resource, you do not have resource management, you have mismanagement and chaos.

As one of the many small businessmen who relies almost totally on the use of the portion of the boundary waters, I have to be able to know from one year to the next what rules and regulations are going to apply. But we don't have that situation now. It is impossible to know what is going—who's going to do what next and how it is going to affect our business and our lives. It is extremely frustrating to try to make a sound decision when there are—when there is so much uncertainty caused by the activities of the Government. The bureaucracy is out of control up here, and we have to find a way to change this situation so that we can have some certainty and peace of mind in our lives again.

I think the reason the bureaucracy is out of control is that there is nobody in charge. There are a lot of people who want to be in charge and are trying to be in charge, but there is no one that has the authority to do the job. There is a lot of empire building going on, but not much cooperation or coordination amongst the empire builders. The people seem more interested in establishing and protecting their own authority than protecting and managing the re-

source. It seems that the agencies are trying to outdo each other on putting on regulations and restrictions without much consideration for those of us—for those who use the resource. As a result of this situation, the users are being forced into smaller portions of the resource. You may have a 40-acre tract of land that will support 50 cows, but if you keep forcing those cows into smaller and smaller portions of that land, the 40 acres will no longer support those 50 cows. That's the kind of situation we are running into on these border waters. Because of the unequal distribution of use, we are seeing overuse in small portions of the resource and underutilization of other portions.

As far as a solution is concerned, it seems to me that we have to have someone in charge in order to straighten out all this confusion that has been created in recent years and to come up with solutions that are based on common sense and proper resource management. The proposed international commission is the best way I know of to do that, but the commission has to be given authority enough to get the job done, and it has to be made up of people with the ability to do the job and who are independent from the agencies that are currently making resource management decisions on border waters.

Finally, there is an international treaty in existence between the United States and Canada that contains a great deal of wisdom. I'm referring to the Boundary Waters Treaty of 1909.

So when and if this commission is established, it will have some good guidelines to follow, guidelines that have been ignored by too many agencies for too long. Thank you very much, and I appreciate——

Senator DURENBERGER. George, thank you very much for your testimony.

Art.

Mr. EGGEN. Thank you, Mr. Chairman. My name is Arthur Eggen, and I'm a lifelong resident of Crane Lake, MN, where I'm employed as a professional fishing guide throughout the Boundary Waters chain of lakes. I'm also the vice-president of the Minnesota Arrowhead Association, and the statement I present to you today is pending final approval in the form of a resolution of our board of directors.

The MAA is the oldest tourism and promotion organization in the State of Minnesota and the second oldest in the United States. The MAA has a membership of over 300 businesses and some 50 chambers of commerce and associations. The MAA has been actively promoting tourism in northeastern Minnesota for over 60 years. The purpose of the association is to market the region in order to generate increased travel into and throughout its confines and any other area deemed necessary and appropriate. In doing so, we will stimulate economic activity and development, whether directly or indirectly through cooperation with other organizations, agencies, and communities having similar goals.

It is through our membership from the Boundary Waters area that we hear there are many regulations and policies coming from some 20 different governmental agencies. This is causing a direct negative effect in communities throughout the Arrowhead Region. Each of these agencies in their own best interest may claim to have

some sound resource management policy. However, when such agencies impose regulations in their areas of concern, it is often done without respect or communication with others affected by such regulations.

The MAA supports the development of a comprehensive management plan that will encompass the concerns of the entire border region. A comprehensive management plan will give long-term continuity to the border area and will allow the international tourism industry to benefit through continued growth and expansion.

And, Mr. Chairman, in further testimony, I, Arthur Eggen, wish to express my personal concerns on the border management issues.

As I stated earlier, I'm a lifelong resident of Crane Lake, MN. I'm directly involved in making a portion of my income from the border lake resources. From the time that I was 14 years old, I have tried to satisfy the requirements to guide fishing parties professionally along the Minnesota-Ontario border waters. Over the years I have complied with regulations imposed by governmental agencies of both the United States and Canada.

As I continue my endeavors, I find myself having to carry and explain 13 documents, both United States and Canadian, because these respective governments fail to recognize the Boundary Waters Treaty of 1909. Some of the documents which I must carry are in direct violation of this treaty.

If we look to Mr. Don Parmeter's report entitled, "An Assessment of United States-Canadian Boundary Waters Issues Along the Minnesota-Ontario border," we find some 20 governmental agencies claiming some regulatory right to the border resources. It becomes evident to me that there is a lack of cooperation, communication, and respect for each agency involved.

With these inconsistencies existing along the boundary waters, it makes it nearly impossible for one to be legal on all counts of law imposed on the area.

Therefore, I endorse the proposal of a Canadian-U.S. joint commission that will hear the demands of both U.S. and Canadian citizens; that will cooperate and communicate with all governmental bodies concerned; that will formulate a master plan of management that is beneficial both economically and environmentally for the citizens of both countries; that demonstrates continuity across the broad range of resource management for the entire border community.

I realize that the implementation of a commission that can address these governmental violations is going to be an uphill battle. However, if the heads of our governments can recognize these concerns, we as people of the border lakes can feel confident in pursuing our goals and lifestyles in this unique area. May our voices be heard for the betterment of all concerned, and I thank you.

Senator DURENBERGER. Arthur, thank you very much. Let me thank all of you for your testimony, for your brief summaries of your larger testimony, for your endorsement of the concept of a commission, for deploring all of the bureaucracies you're trying to wade through, and for Mike's speech about the Constitution.

I'm going to ask Arlan, do you have any questions?

Congressman STANGELAND. Well, my only question to this panel would be in light of the fact that Minnesota does not favor giving

up any jurisdiction to a Federal joint commission, are you gentlemen upset with us for introducing legislation that would create such a commission taking away powers from the State of Minnesota?

Mr. TRUEMAN. Nobody that I know of. If you're asking me directly, I wouldn't object to it.

Mr. SCOTT. I have one question. And that would be how would you propose to talk of the border issues without talking of the treaties or the violations of the treaties, some which are within the Forest Service, some are within the Park, yet we have eliminated this part of the boundary—in your opening statement, we have eliminated the large part of the problems that we are here discussing today.

Senator DURENBERGER. Are you asking me that question?

Mr. SCOTT. Yes.

Senator DURENBERGER. Well, the purpose of the hearing is to try to wrestle with that kind of a question. I set out a limited adgenda for today because we are having a tough enough time getting anybody other than the three of you to even endorse this concept of a joint commission. That if we start out by saying it is going to cover every natural resource issue in approximation of the Canadian border, we will never get to the commission. We will spend all our time dealing with the issues and we won't get to the commission. So I'm trying to go one step at a time to define whether or not we need this kind of a mediation vehicle and then to get the vehicle to deal with the issues that I defined earlier, rather than debating whether or not the BWCA Act was a violation of either of those two treaties or the Voyageurs National Park is not being administered properly.

There may be an issue within Voyageurs National Park, such as the access of certain boats to the park waters or to a landing site or something like that might be incorporated in the discussion, but it is the need to deal in the immediacy with the kinds of issues that each of you have talked about and Mike in particular talked about in terms of the fish resources that brought us to confine the scope of the debate.

Mr. TRUEMAN. Senator, I just have one question. Are we to understand—and I'm sorry we arrived late, but mother nature wouldn't allow them in apparently any sooner. Are we to understand that Joe Alexander's statement was on behalf the State of Minnesota and was against Federal intervention?

Senator DURENBERGER. Yes, I have been given to understand that—I have read his statement a couple of times, and I am to understand that is on behalf of the State of Minnesota and he is definitely against any kind of a commission.

Mr. TRUEMAN. Well, we met with Governor Perpich and, to my knowledge, there are two letters from Governor Perpich to Secretary Shultz, I believe, to Secretary Clark that was asking for Federal help in this matter, so——

Senator DURENBERGER. That is a distinct issue. His statement does say that the Secretary of State ought to exert influence on the resolution of the problem. We don't need a commission, he says, to resolve some of these problems. My problem is that that isn't what I heard from you. That is one of the problems is we need a decision

making mechanism, not a diplomatic mechanism, which can resolve some problems, but not all of them. And, second, I find it rather unclear where the State of Minnesota has signed off on any of these issues and said, "All right. Now let's turn it over to the Secretary of State." Now, if you have a letter that we can make part of the record on that, that would sure be helpful, but as others have pointed out here, there is an internal contradiction in Joe Alexander's statement in that he says these issues are none of the Federal Government's business, but we would like the Secretary of State to put pressure on the Canadians to help us resolve them, and I can't quite figure it out.

Mr. TRUEMAN. I would just say this. I know from our area that we firmly believe that those treaties were prepared, the intent as the area is now being governed is not being adhered to, and it is our understanding that they were Federal treaties, and it is Federal to Federal whether Joe Alexander is talking for the State or not. I do have at least two letters from Governor Perpich asking for the Federal intervention. If you need copies, we will get them to you.

Senator DURENBERGER. Jim.

Congressman OBERSTAR. Thank you, Mr. Chairman. I'm sorry I had to step out for some matters downtown in International Falls, but I will read the record for your complete statement. I know the Governor feels very strongly that there has to be an intervention at the State Department level. I don't know what his view would be on the commission proposal, nor have I heard him ever express a view on that particular matter. I know he does feel strongly there ought to be intervention at the State Department level. He has sort of thrown his hands up out of frustration in trying to deal with the Province. The question I wanted to ask is, George, on behalf of the Border Lakes Association, what have been the economic impact effects so far of the Canadian decision?

Mr. SCOTT. The only restriction, Jim, that is applied in our area is not the $3 fishing fee, but the $3 camping fee that was applied a year ago. This has put pressure from the Canadian side all over into the National Park on the American campsites along with the pressure that has been a very small amount that was diverted from the family camping on Lac La Croix to the Park Service campsites, we are getting an overuse of that area and nothing in other areas.

Congressman OBERSTAR. Has it had the effect of diverting business away from United States side resorters to outfitters into Canada?

Mr. SCOTT. Yes. The people that go through the Crane Lake area that would go to camp on the Canadian side of Namakan no longer do this. They are not there.

Congressman OBERSTAR. At the conclusion of the season, it would be very helpful to have documented all of that in dollars and cents through your association. That would be helpful to both of us in order to make our case with the Canadian authorities on the economic effects. Thank you.

Senator DURENBERGER. All right. Thank you, gentlemen, very much. I appreciate your testimony.

[Mr. Trueman's prepared statement follows:]

Prepared Statement of Michael B. Trueman

Mr. Chairman:

Understanding that most all areas of the border are represented to speak here today, my remarks will address Lake of the Woods area specifically.

In May of 1980, Ontario's Ministry of Natural Resources imposed a per boat limit of 18 walleyes for all non-residents. Understand that periodically, due to mother nature's windy ways, American based tourist operations use larger boats that carry up to 6 fisherman, to escape and fish in Ontario's sheltered islands. This requires crossing 20 to 30 miles of open water. Ontario camps do not need or use these larger boats.

Nov. 4, 1981, 4 members of Lake of the Woods Resort Assn. of Baudette met with Ontario Ministry Officials in Kenora, Ontario to discuss future regulations. They were told in part by Mr. Guy Winterton, Quote "We are going to put you out of business and you don't have a leg to stand on."

In a letter dated March 12, 1982, addressed to Baudette Businessman Barry Westerlund from Kenora, Ontario Ministry Official and District Manager D.B. McGregor in explaining the reason for the 18 fish law. McGregor states, Quote "It is our intention to eliminate the charter boat industry from Ontario waters. The 18 fish boat limit was expected to do this."

In the last five years, we have also had Custom and Immigration problems along with recent establishment of a New Provincial Park in Lake of the Woods which is rumored to further restrict American Tourists.

These Ontario Regulations and Restrictions are said to be in the name of Resource Management and Conservation and can be summed up in Ontario Ministry Official D. B. McGregor's letter of March 12th when he states, Quote "We have a stressed fishery that needs to have the harvest further reduced and this will come from areas that provide the least economic benefit to Ontario."

The Rainy River Record, Rainy River, Ontario on Dec. 22, 1977 published an article "A Comprehensive Look at the Lake of the Woods Fishery." This report was released on Dec. 13, 1977 by the Kenora Office of the Ministry of Natural Resources, which states in part, Quote "The potential annual sustained yield of walleye in the Ontario portion of Lake of the Woods is 797,760 pounds. During the 1960-69 period, the commercial fishery took 650,000 lbs. of walleye annually and the anglers 550,000 to 800,000 pounds of walleye for a total of 1,200,000 to 1,450,000 pounds. The fishery of the 1970's is showing this stress. While the commercial fishery has taken over 1,000,000 lbs. in years past, from 1972-76 the commercial catch has been 500,000 - 650,000 pounds. The additional 500,000 to 600,000 pounds taken by angling brings the total to over 1,000,000 lbs. still surpassing the sustainable yield of 797,760 pounds. IN 1977 though, the commercial catch alone has increased to about 900,000 pounds with another 500,000 pounds in

the angling catch."

From Ontario's own report, their figures show they have raped their own resource and their Anti-American Regulations were prepared and imposed to make us a scape goat for their own poor fish management policies.

Obviously, I am pointing the finger at Ontario's Ministry of Natural Resources because the regulations they were allowed to impose against American Business in Lake of the Woods County over the last 6 years created significant financial hardship to our tourist industry. However, what this committee needs to recognize is that none of these regulations should have ever been allowed.

The ground rules for these border waters are written in the treaties. The treaties were written in simple terminology and were simply understood. Although the modern day usage has changed from 1842 and 1909 the definition, of words and phrases in these treaties have not. Phrases like "Forever continue free and open", "Both Countries equally", "Use and enjoyment". "Applying equally and without discrimination" are still understood by border residents to be the rules.

The Ministry of Natural Resources is a prime example of a Bureaucracy out of control with no one to answer to or take responsibility for their actions. As other government agencies and special interest groups have done on both sides of the border they continue to impose regulations of self-serving interest. This is all being done without regard to treaty language or intent.

We need an instrument put in place to govern or rule on any and all border water regulations using these existing treaties as the guideline.

These United States police and govern this Country according to the Constitution that was written for us over 200 years ago. By our fore fathers. The words, phrases and intent are still valid today.

On these border waters the treaties are our constitution and we need our American Rights protected.

Thank you for the opportunity to present these issues.

Baudette Area Chamber of Commerce/Resort Assn.

Michael B. Trueman
Co-Chairman

Senator DURENBERGER. Now, we have a microphone. I guess this is it right here, and I know Irv Anderson——

Mr. ANDERSON. Senator, I will use my time—in the interest of the lateness, I will submit my written testimony.[1]

Senator DURENBERGER. OK. How about—do we have other people here who would like to make some brief statements for the record?

Ma'am, would you be willing to come up and use the microphone. And let me just say to everybody else while she is coming up that for those of you who don't want to take this particular occasion to make some comments, I have indicated earlier that we will hold the record of this hearing open until at least until September 13. If that is a problem with anybody, we will try to extend it, but at least until September 13. So that if you want to make a statement, if you want to get information that would be helpful, if you have learned something here today that you would like to react to, you heard some testimony here today that you don't agree with and you would like to get another side of it in, anything like that that would be helpful to the subcommittee, you do have at least from now until September 13 to send it to my office. And I guess—to where? In the office in Washington, which is 154 Russell Building, and it is—the zip code is 20510, Washington, D.C.

OK. If you would identify yourself by name and whatever else.

TESTIMONY OF PATRICIA THORPE, INTERNATIONAL FALLS, MN

Ms. THORPE. OK. I'm Pat Thorpe, and I'm just a housewife. I have——

Senator DURENBERGER. From where?

Ms. THORPE. From International Falls. You have 19 regulatory boards in this thing?

Senator DURENBERGER. That's what Jim says.

Ms. THORPE. Now you want another commission. That makes 20. What are you going to do with the other 19?

Senator DURENBERGER. The other 19 continue to—I will just talk about my proposal. Each of the 19—and I'm not familiar with all of the 19, but a lot of them, as I heard him talk, have a very specific assignment, relatively narrow assignment from either the State or a national government. What we don't seem to have here all the time—sometimes we do. Sometimes a Governor comes down and just says, "Knock it off you two guys." He is talking to his own State agencies, or the same thing can happen at a national level. But where that doesn't exist and you do have that overlap or you have that conflict with somebody else, we are searching for something other than the State Department that helps in advance to resolve those kinds of conflicts. I guess that's what we are looking for.

Ms. THORPE. OK. I have a couple of things that I really want to really say. You want to have a commission of three people from Canada and three people from the United States. You don't want to have them, what I understand, as a "representative," of the government. In Canada I think it is going to be a little difficult, because most of the people on these boards are government appoint-

[1] See p. 100.

ed, so they are going to speak for the government. You're not going to get anybody on that board that is going to be for you or for us. They are going to be for them.

Their problem is the user fee is putting money into Canada. They don't want the people on the border. They want them into Canada. They want us, the Americans, into Canada where they can spend more money by staying in the campgrounds, in the resorts, going to their grocery stores and buying their groceries at their prices. So that's the whole thing with them. They are interested in their economics as well as we are.

The man from Lake of the Woods said that he has had over a 31 percent decline in his economy. All right. He has got the decline. Canada—guess what, guys—they got the increase, because they got our money not only from the user fee, but because we have to go to interior Canada.

The only thing I can see the way we are going to do this thing is we have got to picket Canada. We just have to stand at the bridges and say, "Don't go into Canada. They are taking our money and they are giving us nothing." And they are absolutely giving us nothing. We can't fish. We can't use the boats. They are losing their big barges or their big yachts or whatever it is that they are losing, but you stand there at the border and say, "Really, do you want to go into Canada? It is going to cost you this much, this much and this much." And hopefully the people from Iowa will turn around and go back to Kabetogama or they will go back to Crane Lake or they will go back to Sand Point. And that's just all I have to say. We are just feeding Canada, and they love it. They don't want us. They want our money. It is worth more.

Senator DURENBERGER. OK. Thank you very much. Anybody else that wants to be heard now? If there is anyone else, come on up here to the microphone.

Mr. BOKORNEY. Can you hear me without the microphone?

Senator DURENBERGER. Well, it would sure help. It would help the reporter and everything else if you could come up. And anybody else that wants to do that, just line up right over here. And if you can try to limit your remarks to three minutes or something like that, it would be great.

TESTIMONY OF FRED BOKORNEY, KABETOGAMA, CANADA

Mr. BOKORNEY. OK. I'm Fred Bokorney from Kabetogama.

We have addressed—first I want to compliment Congressman Oberstar. I think he has a better grasp of the problem here than a lot of the people do. We have talked about the Customs regulations at Baudette. We have talked about the 18 fish limit. We have talked about the $3 a day user fee. There are other restrictions. There is a $3 per person camping permit, ground land camping permit required in Canada. My bailiwick for the last few years has been to drive up into Canada on the Dryden Road and fish by canoe into the small lakes. This year they have implemented in northwestern Ontario another regulation that prohibits non-residents from camping on ground land except in designated areas. In the 125 miles between Rainy Lake and Dryden, there is one desig-

nated spot, one picnic table, one outdoor privy, very meager camping facilities.

Contrary to what Congressman Stangeland said, we do have a weapon to fight back. It would be a little sacrifice on our part, but if a regulation were imposed that prohibited the importation of gaming fish from Canada to the United States or, more specifically, from Ontario to Minnesota, I think you would bring the Canadians to the bargaining table very, very rapidly. It would be a hardship on the resort owners especially down in Lake of the Woods, but the Canadians are out to put them out of business anyway, so this would be a short-term type of thing.

I have a great deal of respect for lean, hungry, and aggressive businessmen, but the Ontario people are simply getting greedy, and they are imposing these restrictions, as has been said, simply to put more money into the Canadian resorter's pocket. You can talk until you're blue in the face, but the Ontario people are very, very arrogant about it. And I have talked to four or five people at the Ontario Ministry of Natural Resources office. They tell me they want to conserve their natural resource, the fish. They can do that by restricted limits. They can do that by restricting their commercial fisheries. They tell me the camping permit is to give the Canadians room to camp because they have been crowded out by the Canadians. In the last 6 or 8 years, I have not seen a single Canadian party camping up there and only three or four state's parties.

I think if we are going to play ball, we have got to play by their rules and play hard ball.

Senator DURENBERGER. All right. Thank you. Thank you very much. Anyone else who wants to be heard?

TESTIMONY OF PHIL PAULBECK, INTERNATIONAL FALLS, MN

Mr. PAULBECK. My name is Phil Paulbeck. I'm a local businessman in International Falls. I came here more to help understand the issue than I did to offer suggestions or solutions. The point I want to make is that earlier the statements were made that we have the deuces and they have the aces, and I think that is obvious. That for us to effect any change, it is going to be necessary for us to find issues that are of importance to the Canadian people to get them to understand that the issues do have two sides. The issues that have not been brought up are that other local businessmen affected. Our boat dealers are suffering now due to inequitable customs laws that permit Americans to import at little or no duty from Canada and extract a very high premium to take goods into Canada. The Canadian provincial premiers were on television, the Journal Program last night at 10:30, and made statements to say that they are interested in going to the bargaining table over trade issues with the United States. I think that our Federal legislators have the duty to bring our interests into that discussion to find items that are of importance to Canada and to find some relief for our problems. We are small. We are very sparsely populated up here, and our interests will be not heard in Washington by the lobbyists. The fishing industry on the east coast, the lumber industry, the auto industry, the rubber industry, the heavy industries all have their interests well represented through their lobbying ef-

forts. I think that we need to count on our Federal legislators to bring our local small issue into that discussion and see if we can find relief in that manner. Thank you.

Senator DURENBERGER. Thank you very much. There is—just proof of that is last year when whatever occasion it was that Rudy and I got—the last time we got real mad at the Canadians, we suggested that we have a $3.25 duty on Canadian walleyes. All hell broke loose on that one on the Canadian side. And the bill is still in.

This year—I don't know what Rudy's position is, but I got on the 25 percent duty bill on softwood lumber coming in from Canada, and that got even more reaction from the Canadians than did the walleyes because it was a larger group that was affected. They sent half of their parliament down in the week before the recess and they are scared to death of that kind of activity. So while it may not get a lot of publicity in some areas, the suggestion that the gentleman just made from the Falls is already being taken quite seriously by some of us as attention-getters to the problems of the little people as well as the problems of the big people.

Congressman OBERSTAR. To follow up on that, prior to President Reagan's visit to Canada and meeting with Premier Mulroney, Senators Durenberger, Boschwitz, and I joined in a letter asking him to put this on the adgenda for his meeting. It was not on the President's adgenda, but it was on the agenda of the Secretary of State and the Foreign Minister, Mr. Clark. It was discussed appropriately at the level of Secretary of State and Foreign Minister, where it continues to be a subject of discussion. The problem is that it is a very slow and lengthy process and it is very difficult to see any results when you're already up to your eyes in alligators when your original mission was to drain the swamp. We are still trying to get results, but it is very difficult.

I, too, have joined in legislation in the House on limitations on Canadian softwood imports. I have already included in a Federal Aid Highway Bill on the House side a restriction on Canadian cement imports. We had that in a previous piece of legislation. We will come back at them again. There are many ways in which all of the Congressional delegations are trying to turn Ontario around. You have to understand that, as we have painfully found out, the province doesn't have to respond to the Federal Government in the same way that a state responds to our Federal Government.

Senator DURENBERGER. That always gets to be the heart of the problem. And right now we find the national government in Canada very, very responsive, and just—I alluded earlier to the Baudette Airport situation, they are working on that one very quickly. On one of the customs problems that we recently had, they resolved that one very quickly. And the near-term problem is going to be with the new government in Ontario and what we can do in that regard. And I'm sure the national pressure is as hard as we can get it. The Canadians realize they are benefiting from the fact that we can't curb our appetite for spending in this country and we have a deficit that is going through the roof, and that makes buying in Canada because of the currency differences so much more attractive. They're benefiting from that, but what they can see coming on our side is we are going to erect the barriers to

offset that or we are going to lose all kinds of American industries. They are scared to death. They literally have sent a lot of parliamentarians in there, and everybody knows what the Lake of the Woods County Board did in Washington when they talked about pulling the spikes out of the Canadian National Railway. The Ambassador knows that, the parliamentarians that have come in from other parts of Canada know about that.

So every once in a while it is an action taken by somebody here or the threat of an action taken by somebody here that shows the deep concern that a few number of people have in this part of the State and this part of the border that is their livelihood. Everything that everybody brings to this meeting today is their whole livelihood. This is not just a little special interest people have. This is your livelihood. This is all people in this part of Minnesota have. There is only 3,900 people living in that—and that's it. This is it. And the Canadians or the Ontarioites, or whatever we call them, are taking it away from a lot of people, so—is there anyone else who would like to be heard?

UNIDENTIFIED SPEAKER. Well, I just want to make an off the cuff statement, and that's that I believe you are entirely right when you're addressing this on the economic issue. It is money. It is not fisheries or resources or anything. It is money. And until Ontario finds out it costs them to do this as well as us, they are not going to respond to anything else. I think you found that with your negotiations. And we have been aware of their timetable for a number of years, and as far as I can see, they haven't deviated from it at all in terms of time or where they plan to be at a given time. It is right on the money, and everything else—our State has tried to negotiate in good faith, and they have been flummox at every turn.

Senator DURENBERGER. OK. Anyone else?

UNIDENTIFIED SPEAKER. Off the record.

Senator DURENBERGER. Why don't you wait until it is over and then come on up and talk to us.

UNIDENTIFIED SPEAKER. How come you haven't pushed that bill that you did enter on the $3.50——

Senator DURENBERGER. Well, we are. We have to have what they call a germane vehicle to put it on, and we are just waiting for this trade legislation to come down the pike this fall. Don't worry about that.

All right. Bob.

TESTIMONY OF HON. ROBERT NEUENSCHWANDER, A STATE REPRESENTATIVE FROM THE STATE OF MINNESOTA

Mr. NEUENSCHWANDER. Since we are nearing the end of this, Senator Durenberger, I wanted a chance to personally thank you for taking the initiative to come here and Congressman Oberstar and Congressman Stangeland as well. I know that Senator Lessard and myself were involved in some of the State negotiations in going to Toronto. I think your being here is witness to the fact that the State found itself powerless to resolve anything on this issue.

There were a lot of offers made, there were a lot of attempts made, there were a lot of people that went to Toronto in good faith and, I believe, negotiated in a posture of trying to say that we

ought to be able to work this out between our State and their province. It seemed at least on my behalf and from others I talked to that they were receptive to that and many times wanted to play the game, many times wanted to say, "Well, maybe we could listen." And they have a long-term mission and, for the most part, just seemed to lay back in the weeds while we did all kinds of posturing and tried to come up with resource cooperation issues and then ultimately came back and did what they wanted to do from the very beginning. And I agree with what you're saying, it is strictly an economic issue with them. It is not a matter of resource.

But I think the important thing now is the reason you're here today. We are facing a time when there are interests on your behalf and the Federal Government to get involved with this issue and try to bring it to a result. But there are many people, I'm sure, in the district who are also a little bit concerned about Federal involvement. We had—long before the BWCA, we had the whole northern border of the State as one free enterprise border, and there are many people who live—and the only reason they live up here is to enjoy the recreation. Almost all the industries along that border are dependent on its resources and dependent on utilizing those resources to attract people from other States to spend their dollars here.

And then the BWCA came and a lot of the people lost faith in our own Federal Government, because it appeared that by taking and preserving of that land, which I don't really think anybody sees any visible changes, a lot of resorters were put out of business. A lot of resorters couldn't operate because of the changes in the mode of how it was going to operate. And then along came Voyageurs Park and not many of those same changes came along, but duck hunting was eliminated and there are different controls and there are fears, as there have always been, that the Federal control means that there will be less free enterprise in this area and that there is more Federal control. The independence in wanting State control, at least, as being the closest local possibility was there. And I think what has happened is that we are now looking at the balance of this border and we are saying, "OK. The BWCA and Voyageurs Park is under Federal control. Now what do we do with the rest of it?"

And we have a problem. We have a problem, because we, as a State, weren't able to negotiate. And Marleen Johnson, our Lieutenant Governor, on behalf of the Governor and Joe Alexander, who has submitted written testimony [1] here, and I don't know why. If Joe couldn't make it—I saw him yesterday at the fair, and he was at the DNR booth there, and he said he had planned to come up if the State plane could get through. Now, I don't know the reason why. I didn't get a chance to really talk to the Commissioner about what his posture was on this.

Maybe part of it is saying something along the line of what I reflected and I have heard from some of my constituents. They are afraid of allowing five people to take Federal control of what's left, because it is kind of the only thing that is left of the whole border.

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[1] See p. 105.

And yet, they realize that something has to be done, and you can't—as I think you articulated earlier, Senator, you can't say, "Well, here is the problem. Why don't you resolve it for us, Senator, and then give us back total control again." Maybe that isn't possible. I think that is what everybody wants is for you to resolve our problem. And I said the very first day this happened, in fact, that—there were a lot of people that said the State shouldn't get involved at all. And I said, "I would love it if the good Senators and Congressmen could come riding in here on a shiny white horse and resolve this problem and go back to Washington and we would all be happy."

Senator DURENBERGER. And then go away.

Mr. NEUENSCHWANDER. And it is not that we want you to go away, but—I don't know, I think that the process that you are looking for here is whether or not the majority of the people, if you want to go by majority will, want the Federal Government to take control of this issue and resolve it through some form of commission. And I guess we are all going to hope that if that happens, that the right people get appointed. You know, if you appoint too many people that represent the resort industry, then who is watching out for the guy that works in the mill? And if you put too many of them on, then who is watching out for the environmental concerns and getting the balance? And five members is very difficult to do and it concerns me, because I feel that at this point, maybe I didn't have anything to do with what happened with Voyageurs Park and the BWCA, because I certainly didn't, and now I stand here wondering if I support this, which I would love to do, to see it come to a resolve. Will I regret this 5 years from now or 10 years from now if they shut down our fishing season and say we no longer can duck hunt on the flyway or they take away some of our trapping rights? You know, what is going to happen then if right now I'm in this position where I would love to be able to endorse it and embrace it because it is going to help us, but I found out 10 years from now that somebody is actually wanting to take away something in the process of doing this?

I think those are the things we need our constituencies to be thinking about and then respond to you with their good faith that they either want you to help or for some reason they feel that it is not you, but the whole concept of Federal control that they are afraid of. And I don't want to mislead anybody or steer anybody one way or the other, but I think those are important things to think about from our standpoint and those are things that I have to think about. And I'm looking forward to the input that I'm going to get from the constituency and the people that are here and the people that read about this that take the time to let us know how they feel and as we solicit their input before I turn around and give my input to you on an official basis. But I do appreciate and thank you for being here today and sharing this time with us.

Senator DURENBERGER. Bob, thank you. That is a very interesting insight, and I hope everybody thinks about it. The last thing that two Republicans want to do is create another Government agency. The notion here of the Senator and the Congressman coming up with this is largely frustration and in trying to find

some kind of a mediating mechanism. But I think your concerns are well stated and need to be thought about in terms of the constituency and the responsibility that a commission like this or the authority that it might have if it is possible to put it together. Arlan.

Congressman STANGELAND. If I might just respond very briefly. My concern—and I certainly share the Senator's thoughts and the State Representative's views—I'm not one who believes all the answers lie in Washington in a Federal establishment, but I have seen Ontario's actions on the Lake of the Woods: the 18 fish limit; the banning of shore launches; landing on islands, which we got finally returned around; the required work permits; a user fee; just one thing after another. If something isn't done beyond what the State of Minnesota has been able to do to this point, within 5 to 10 years you will have a tourist desert on the Minnesota side, and it will be all Ontario. And so, you know, I am concerned that if we do appoint a Federal commission and maybe it does go overboard 10 years down the road; however, if we don't do something now, there won't be any need for any concern on the border from the Minnesota side. It will all be up in Canada.

Senator DURENBERGER. OK. I take it there are no other——

Mr. WHEELER. I would like to say one thing.

Senator DURENBERGER. Could you come up here and use the mic. While you're coming up, let me acknowledge the presence of the mayor of International Falls, Bob Anderson. It is great to have you here. And, Senator Bob Lessard, good to see you here.

Would you give us your name and where you are from?

TESTIMONY OF LOU WHEELER, CRANE LAKE, MN

Mr. WHEELER. I'm Lou Wheeler, Crane Lake, Minnesota. In regards to losing our trapping rights and hunting rights, I think our Federal Government has practically and effectively eliminated them from International Falls to Pidgeon River by imposing the laws of the BWCA. How can people get in now? In Voyageurs National Park, one cannot trap anymore. And I think the majority of the people here are interested in that portion of the boundary, the waters only, between Lake of the Woods and Pidgeon River. That's what the Webster-Ashburton Treaty talks about and that's what the Root-Bryce treaty talks about. And I can't see why two governments can't get together and why Minnesota and Ontario should set their own regulations on over a Federal treaty.

Senator DURENBERGER. Lou, thank you very much. Anyone else? Oh, I'm sorry. Go ahead, Bob.

TESTIMONY OF HON. ROBERT LESSARD, A STATE SENATOR FROM THE STATE OF MINNESOTA

Mr. LESSARD. My name is Bob Lessard. Senator, Congressman Oberstar, and Congressman Stangeland, I want to thank you for coming. I don't know, Jim—Jim and I were on the same airplane, and when we get on the airplane and I go on the back—a little humorous levity here—and here is the mayor of St. Paul, Mayor Latimer. I don't know if you know this, Jim, but the smoke—did you see this?

Congressman OBERSTAR. No.

Mr. LESSARD. We were sitting in the back in the airplane. I'm here, he is here, and you're up in front and you never saw all this. We are looking at this smoke coming out, as we thought it was smoke. And we are nudging each other, and he is sitting over there, and I looked at him and he looked at me—he was sitting back—and as it turned out, we asked the stewardess, "Is that smoke or what is that?" She said, "Don't worry. It is frost or whatever it is from our system, because it is a damp day." So I said, "Well, if something happens, how do we get off the airplane in the order of seniority? Does Oberstar get off first, do I get off first, or does Mayor Latimer get off first." So we flew all the way with that smoke coming out in the air.

The second thing is, I don't really care whether it is the State Department or whatever organization you come up with the committee. The facts are it is going to have to be resolved by a Federal level. There is no other alternative. That's what I want to make very clear.

On the positive side of this, if you do get a commission going, there is one thing I want to bring up. Four years ago I talked to some of the members of the Province of Ontario about some positive things that can be happening. Number one, as far as say Rainy Lake—I'm speaking for Rainy Lake now. One of the problems up here is we do not have, in my opinion, the reproductive capacity given the lake of Lake of the Woods. I think that they have got a natural spawning grounds there and we do not. I think that hatcheries and this type of thing would be—maybe Lake of the Woods doesn't need it as much as Rainy Lake, but they do have other problems in size and this type of thing. People from Lake of the Woods can respond to that.

One of the things that we did offer or I started—and I understand the DNR did talk to the department about this—our fish hatcheries, basically our fish are done spawning much earlier, 2 to 3 weeks or more longer, than the province of Ontario. Our fish hatcheries—our multimillion dollar fish hatcheries are basically laying dormant at that time. And one of the things that we tried to get a discussion going and maybe if you get this committee going, you could look at a positive benefit that the State of Minnesota, if they would produce, you know, the spawn, we would hatch the walleyes. You know, use of facilities, which would save them the investment, of putting in hatcheries and get to a joint—joint agreement between the two. Because when their fish spawn, ours are behind theirs. So we would get better use of our hatcheries.

The reason I bring this up is that if we get a committee going, there is some positive things that we can do to try to put this thing back together. I do know that the State of Minnesota—and I talked to Commissioner Alexander about this. He was all for this. I don't know if the State of Minnesota would be all for it. We could bear the burden because we have the staff there anyway. So I don't know what you think about that. That's one thing I wish we could address if we can get some type of dialog going between the two countries, which I think is necessary.

The second thing is—it is a personal—I have been waiting to say this for a long time, and we have a problem in Rainy Lake, and

one of our problems as far as I'm concerned, and I have been asked to bring this up by some members of this particular—the group that is here, and that is our water levels on this particular lake. One of the problems is—I'm not referring to the flood we had this year, because that is mother nature and an act of God, but the problem we have got, I feel, is that a curve on this lake may be too high. We have no more—as far as I'm concerned, the wild rice depends on—not necessarily low water, but it certainly doesn't depend on high water. The facts are if you go up on the Canadian side where the wild rice, there is none. Now, there isn't going to be any this year, but there hasn't been any for all practical purposes for the last 4 or 5 years when we did not have this particular problem. And one of the problems—that's another thing you could look at that is a joint commission problem but is not being addressed, that the curve—as far as I'm concerned, the levels of the water of Rainy Lake are being taken up at the Kettle Falls end, and there is a vast difference up there—I don't know how many feet—1, 2, or 3 feet—from up there than down here. So what I'm saying is if you do get a committee going, maybe we can get something going that will benefit the lake on a positive basis. So look at that. But I want to again say that the facts of the matter are that the State of Minnesota cannot solve this problem, and that's all I'm going to say. So I want to thank you for giving me the chance to bring this to your attention. Congressman?

Congressman OBERSTAR. Bob, thank you very much for raising that point. I would suggest that those who are affected by high water levels give me the facts and information on that matter, and together with Senator Durenberger, we can talk to the IJC about it. We have had the similar problem on Lake Superior as a result of an IJC decision to hold additional water and Lake Superior can benefit all Great Lakes users; that is, those on Michigan, Erie, and Ontario. I appealed to the IJC to release more water out of Lake Superior to avoid the oncoming storms of November that devastate the North Shore and the South Shore. IJC has responded and they have acted. The Rainy Lake Board of Control comes under the jurisdiction of the International Joint Commission, and I think together we could get the IJC and the Corps of Engineers, the agency that does the water management work for the IJC, into our offices and work out an agreement. But get us the facts on it.

Mr. LESSARD. Jim, I appreciate that very much. I would like to point out that this is something that is bipartisan. A lot of Canadians feel the same way on this issue, so this would not get into a controversial field. Thanks again for giving me the time.

Senator DURENBERGER. Thank you all very much. On behalf of the subcommittee and my colleagues here today, I thank all of you for being here and especially the witnesses for this testimony. The subcommittee is adjourned.

[Whereupon, at 5:30 p.m., the subcommittee adjourned to reconvene at the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Resolution #85 - 28

RESOLUTION: Boundary Commission

DATE: August 12, 1985

WHEREAS, Article VIII of the Root-Bryce Treaty states that the International Joint Commission "shall have jurisdiction over and shall pass upon all cases involving the use of the boundary waters"; and,

WHERREAS, Article I of the Root-Bryce Treaty provides for "free navigation applying equally and without discrimination to the inhabitants of both countries"; and,

WHEREAS, The Canadian government is charging a fee solely to Americans for using Rainy Lake in Canada;, and

WHEREAS, A number of issues and questions regarding use of the boundary waters remain unresolved; and ,

WHEREAS, Minnesota Congressman Arlan Stangeland and has introduced legislation to authorize the President to negotiate an agreement with Canada creating a joint commission to oversee water policy on lakes bordering Canada and Minnesota; and,

WHEREAS, The City Council of the City of International Falls supports in principle, the concept of Congressman Stangland's bill with the exception of Section 2, Subpargraph (2) (3) which gives the commission the authority to set fish limits and license fees;

WHEREAS, Such a commission is necessary in order to establish policies and regulations that are coordinated and consistent and to promote cooperation among public and private interests on both sides of the border;

NOW THEREFORE BE IT RESOLVED: That the City of International Falls requests that the Minnesota delegation and U.S. State Department ask that the International Joint Commission hold hearings on eliminating the discrimination against Americans for using Rainy Lake in Canada, and the the City of International Falls supports an international boundary water commission to address issues along the Minnesota-Ontario border and goes on record in support of legisation that would authorize such a commission.

This is to Certify the above is an exact copy of a resolution passed by the Int'l Falls City Council at a regular meeting held August 12, 1985.

Gary B. Davison
City Clerk-Treasurer

U.S.-CANADIAN BORDER PROBLEMS AND ISSUES.....

A RECOMMENDATION FOR THEIR RESOLVE.

BY: IRV ANDERSON
909 Thirteenth Street
International Falls, MN 56649

1. Citizen and landowner of Northern Minnesota all my life.

2. Frequent visitor and fisherman of Ontario and its water.

3. Have relatives who reside in Ontario and are citizens of Canada.

4. Have served in the Minnesota legislature eighteen years, in various leadership positions, including House Majority Leader and House Tax Committee Chairman.

5. Have served as delegate to the National Conference of State Legislatures and a delegate from that body to a meeting called to discuss creation of an international commission between Canada and U.S.

6. Presently serve as Chairman of the Minnesota Citizens' Council on Voyageurs National Park, a legislatively created Commission to provide citizen input into the issues regarding establishment and operation of Voyageurs National Park.

BACKGROUND OF BORDER PROBLEMS

On August 23, 1985, Senator Dave Durenberger held a public hearing in the city of International Falls, Minnesota on the proposal of establishing a joint commission to develop and recommend a management plan for the border resources. The joint commission is to be composed of Canadian and U.S. members.

Senator Durenberger also indicated he has endeavored to have the border issues eliminated through the U.S. State Department and Canadian Embassy. While Secretary Shultz has brought this up to Canadian Foreign Minister Joe Clark on two separate occasions, it does not appear that a diplomatic solution is in sight.

Mr. Don Parmeter, Executive Director of the Citizens' Council on Voyageurs National Park has compiled an excellent report on the natural resource issues currently in existence along the U.S.-Canadian boundary. Mr. Parmeter also makes a recommendation to establish a bilateral organization whose function would be to prepare a coordinated management plan for the boundary waters between the two countries, and that disputes unresolved by the management plan or normal diplomatic means should be referred to the International Joint Commission.

The State of Minnesota set up a Committee headed by DNR Commissioner Joseph Alexander, in an attempt to resolve some of the border issues created by the Province of Ontario, namely the daily user fee and camping fee.

While they met with a number of Ontario dignitaries and officials they were unsuccessful in their quest for resolve. A visit of the Ontario Premier to the State also brought no resolution of the issues.

Various officials, including State Legislators, have spoken out against the Ontario regulations.

Congressman Stangeland from Minnesota's 7th District has introduced a bill into the Congress calling for the creation of a joint U.S.-Canadian Commission to resolve the issues.

More than one hundred Minnesota state legislators signed a petition requesting that the ban on motorboats in the International waters of the BWCA be lifted.

It is apparent there is tremendous interest and very strong feelings by the citizens on each side of the border over the many proposed programs, new regulations now in operation, and restrictions never before experienced. In short, there has been a loss of freedom always enjoyed from the day of creation of our two great nations.

The issues are of such magnitude they have the potential of creating international incidents and certainly can divide or spoil the rich friendship with our Canadian neighbors that we have enjoyed for so many years.

It is my belief that instead of obstructing or causing ill-feelings we and our neighbors should instead work to ease the flow of goods and services across our border and to free-up citizen traffic.

We should be as one, enjoying each others natural and man-made resources, thus raising the quality of life for citizens on both sides of the border.

THE PROBLEM

As we previously stated, the rules and regulations imposed by the Ontario government have interfered with the way of life of many Minnesotans. They have created handship - the loss of revenue to American businesses, and increased the "red-tape" for Americans desiring to fish or camp in Ontario.

In addition, the new regulations have caused mental stress, concern and anxiety in the minds of citizens living near the border. The people have long enjoyed the freedom to pass freely without regulation, rule or permit in their neighboring country's country-side.

In addition, mental stress as to whether the rules and regulations imposed by either government isn't part of a larger plan that could cause major conflict to occur. Inter-relationships could be broken, life long friendships could be in jeopardy and families torn apart by ill-thought out rules and laws.

While we voice these concerns, we also find too many voices are offering solutions and/or instruments. Bodies (I.J.C., State Department) whose functions it appears should be to answer these problems, are indifferent toward them.

The I.J.C., who accepts the responsibility of regulating water levels along the border never seems to completely resolve that issue let alone take on new ones. This is caused, I believe, because the Commission is made up of members of both Canada and the U.S., obviously a perfect forum for endless debate and continuous foot dragging.

The State Department, who apparently held at least two meetings with the Canadians on these issues don't really seem to have their heart into resolving them.

No one likes to see another bureau created, but to place these "new" issues before a commission that already has a poor track record or to create a new commission with similar composition will be to bury these problems in the red tape of bureaucracy, further frustrating the citizens and creating additional apathy.

Additionally, and perhaps most important, the Americans concerned with Canadian regulations are speaking from many different voices. Since there is no "one clear voice" speaking for all Americans - a voice that has taken public testimony and provided the opportunity for our citizens to speak. At the same time, providing a forum for debate with an ultimate recommendation is what is needed.

Simply put, the Canadians can well be confused. The State meets; asks compromise. A public official speaks with another voice. A Congressman asks for the creation of a new commission and at the same time we cannot agree among ourselves, or at least reach accord, on our own domestic programs.

When over 100 state legislators desire change in a federal program within their state's boundary and they are not given proper consideration, is it any wonder our neighbors see no need to change their programs?

We should never be afraid to review or at least listen <u>attentively</u> to concerns expressed by our own citizens or their elected officals.

THE SOLUTION

To do nothing does not provide a solution to the troubles and problems of our citizens. We must act.

I propose the creation of a U.S. national commission on Canadian relations perhaps composed of a member from each of three U.S. Federal Departments (Department of State, Interior and Agriculture), a member of the U.S. Senate, a member of the U.S. House of Representatives and at least five citizen members who are residents of states lying adjacent to Canada.

In addition, the Canadians would be invited to appoint three ex-officio members to the commission who would have voice but no vote.

The Commission would have adequate staff for research. The Commission could be full or part-time.

The Commission's function would be to take testimony and deliberate on issues brought before it by citizens, governing bodies, or organizations of either country.

Issues could deal with American border programs as well as Canadian.

The Commission first would determine whether in its opinion an international law has been violated or interferes with the provisions of an existing treaty.

Once that determination is made, it proceeds to take testimony, further researches the issue, allows debate to take place and ultimately comes forth with a recommendation.

If the issue is a domestic issue (an issue created by a U.S. Department) it then brings the recommendation to the appropriate agency. Urging acceptance, notifying the Administration of the recommendation, also the Congress so that all pressure is brought to bear. The Commission keeps the issue constantly before it to constantly oversee it and provide public scrutiny and pressure.

In the case of an international issue, the matter is brought before the State Department. It monitors the State Department's actions, it watch dogs the issue, again informing the Administration and the Congress of its actions and recommendations, always keeping the public informed and the record open for scrutiny.

The Commission's actions on issues would be similar to the Citizens' Council on Voyageurs National Park, except that it would be a federally mandated Commission. The Citizens' Council on Voyageurs National Park has, as previously stated, an excellent record.

1. Resolved many of the harsh feelings among citizens when the Park was created.
2. Brought compromise to many controversial issues surrounding Voyageurs National Park.
3. Allowed <u>real</u> citizen input.
4. Is really democracy in action.
5. Allowed free range discussion.
6. Brought real and strong pressure upon administrations and the Congress to bring needed change.

7. Holds government agencies accountable for their actions.
8. Relieved pressure on elected officials to make a "political decision."

The Commission on Canadian relations can have the same track record. These border problems are similar in nature to those confronting the Citizens' Council on Voyageurs National Park.

U.S.-Canadian Commissions (such as I.J.C.) provide the opportunity to stall or delay. Our citizens want action. Even if they were to resolve or reach a recommendation on an issue, there would be no real pressure instrument to bring about its solution.

A national commission wishing to bring its recommendation into reality will pressure, pressure, pressure until it gets the job done. If a nationally created Commission, along with Congressional pressure, along with Administration pressure can't get the job done; it never will be done. I look to the record of the Citizens' Council and believe it can be; but to do nothing is sure that no resolve of our issues will ever come about.

Thank you.

This paper was written by Irv Anderson, and not as chairman of the Citizens' Council on Voyageurs National Park. The Citizens' Council position is supported by other resolutions.

STATEMENT BY
JOSEPH H. ALEXANDER
COMMISSIONER OF THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES
AUGUST 23, 1985
INTERNATIONAL FALLS, MINNESOTA
HEARING CALLED BY SEN. DAVID DURENBERGER

Governor Perpich and I, as Commissioner of the Department of Natural Resources, always welcome the sympathetic support of members of our congressional delegation and the federal government to positions we advance on behalf of all of the citizens of Minnesota in regard to problems that arise with neighboring states and Canadian provinces.

Senator Durenberger, I appreciate, in particular, your interest in fisheries problems that are of concern to Minnesotans and that are related to waters that Minnesota shares with Canadian neighbors to the north. Here I believe it is important to remember what good neighbors we have to the north, neighbors that share with us what I have been told is the longest unfortified international boundary in the world. At a time when the world appears to be coming unglued, Americans and Canadians manage to peacefully coexist along a line just north of us that reaches from coast to coast.

But problems do arise; problems that people of good will on both sides of the border seek to resolve within the tradition of a peaceful international boundary.

The primary problem we are concerned with today relates to the management of a natural resource, fish, whose water habitat happens to be bisected by a political (not natural) barrier that is invisible to the fish. It is my experience that in most natural resource problems, the difficulties associated with the problem and the resolution of the problem lie with the dominant species in the ecosystem, the people who use the resource and the people who depend upon it for their economic well-being. So, too in regard to problems associated with the game fish of Rainy Lake, Rainy River, and Lake of the Woods.

I believe that the Fisheries Technical Committee established by the State of Minnesota and the province of Ontario has provided the state and province, and their respective federal governments, with sound data and a frame of reference for fisheries management in the waters just mentioned. I specifically refer to the "Minnesota-Ontario Boundary Waters Fisheries Atlas for Lake of the Woods, Rainy Lake, and Rainy River," published in 1984. (I will supply copies of the Atlas to your staff.) This document is the product of intensive effort by highly qualified, experienced, and dedicated professionals <u>from both sides of the border</u>. This document not only identifies and describes the fish resource of these waters but it provides a sound frame of management reference for both the Minnesota Department of Natural Resources and the

Ontario Ministry of Natural Resources, the regulatory agencies that are now in existence and are functioning well on each side of the border. Each agency, according to the Atlas, is managing its own discrete stocks of fish, not a common stock, as is commonly thought. In the words of the U. S. Fish and Wildlife Service, which studied the Atlas and the management concepts of both agencies, at your request, "both management agencies are proceeding on sound biological information and . . . there is no contradiction in the management concepts of the agencies."

This thumbnail sketch of the technical status of the fisheries of these waters and the fisheries management practices applicable to these waters is not as well known to the general public and government leaders as it should be, and therefore it needs to be told and retold.

Because of the work that has been done on the Atlas and frame of management reference, the facts that are essential to the management of the fishery are known. The regulatory authorities necessary to carry out and enforce the programs exist. These wheels do not have to be reinvented. They are not broken, and do not need to be fixed.

We do not need new layers of government that will inevitably divert taxpayers' money to unnecessary tasks, create additional bureaucratic procedures that inevitably will bring about more delay, and worst of all will drain power from where it belongs (closest to the people), the state and provincial governments.

What we do need in order to resolve the international problems relating to game fish harvesting in these waters is the sympathetic backing of the federal government, particularly the State Department, with all its skills in international negotiation and its ready access to the Canadian government. We need their help not to identify fish populations or to devise fish management programs, but to assist us in searching out satisfactory alternative solutions to the problems at hand and to bring these solutions skillfully and forcefully to the attention of persons who possess the power to make and influence decisions in Canada and its provinces. Neither I nor Governor Perpich wield the power or influence of Secretary of State Schultz and his staff.

The economic stake in the tourist dollar is at the heart of the problem we face in fisheries management on the waters of Rainy Lake, Rainy River, and Lake of the Woods. Minnesota has indicated and has demonstrated its willingness to explore with its Canadian neighbors a variety of alternative approaches to the mutual concern we share in the tourist industry--approaches that are destructive to neither party in the long run.

Minnesota has never claimed to have all the answers. I, for one, am always ready for new ideas that are sound, workable, and fair to Minnesotans.

I therefore specifically suggest, Senator Durenberger, that you apply your efforts to obtain for Minnesota a commitment of ranking staff support, on a continuing basis, from the U. S. State Department, and the funding that may be necessary for such a commitment.

Given the knowledge we already possess about these waters, their fishery resources and management, and the persons and economies dependent upon them, the quickest and most effective approach to long-term resolution of the problem that is uppermost in the minds of the people here today is not a costly new layer of government, but effective use of the government we have, which means sympathetic support of Minnesota's ongoing efforts by the federal government, and practical assistance by the State Department in the complexities of international negotiation.

Based on my experience in state government, this same approach will most expeditiously and economically yield progress in regard to other problems that exist along the international boundary, without bypassing state, provincial, federal, or international governmental entities that are presently available to perform duties that need to be done.

At a time of severe national budget cutting, it is not realistic, in my judgment, to seek millions of dollars for a new commission to perform tasks that may already have been completed and to perform duties that are already assigned, especially since there is no certainty that Canada will do likewise. Focus your efforts on energizing the government of the United States to help us in the task that is Minnesota's, not the federal government's, and we will all be grateful to you.

# # #

STATEMENT OF ART JOHNSON

Sept. 12, 1985

Senator Dave Durenburger
154 Russel Bldg.
US Senate
Washington, DC 20510

THE FOLLOWING IS WRITTEN TESTIMONY FOR THE HEARING OF THE SUBCOMMITTEE CHAIRED BY SEN. DURENBERGER THAT WAS HELD IN INTERNATIONAL FALLS, MINNESOTA, AUGUST 23, 1985.

I attended the hearing in International Falls and carefully listened to all the testimony. I attended the meeting as an interested person who has lived and worked on Lake of the Woods all my life, and I also talked to many people before and after the meeting. I was very curious as to why there was a hearing, at great taxpayer expense, on such an insignificant issue as a $2($2.10 US) user fee. I came away from the meeting with no answers but more questions.

I agree with the State Department, the State of Minnesota, the US Park Service, and the US Forest Service that the Federal Government should not get involved in this issue.

It was clear from the testimony that the user fee did not violate any international treaty. It is very understandable to me why Canada would want to implement this fee in order to better get a handle on their resource utilization. To me this is good resource management.

You must keep in mind that Canada is not closing their border and have no intention of doing that. All they are doing is asking a $2.10(US) user fee. I would like to compare this fee with others that I must pay(but no one complains about). I pay a $7/day user fee every time I go into a Minnesota State Park. I pay $6/day to bring my camper to the [illegible]. I pay $15/pound to buy leeches to use as bait. I pay $38/hour to charter a launch to go fishing out of Baudette. And people are complaining about a $2.10 user fee!

There is some testimony which I heard which I would like to take issue with. A Lake of the Woods County Commissioner noted that resort business has decreased significantly since 1977 and gave the impression that this was caused by Ontario and their user fee. It must be pointed out that the user fee was only implemented in 1985, not 1977.

I also heard testimony from a Lake of the Woods' resort that Ontario has been "raping Lake of the Woods". He apparently has

things twisted around and a short memory. Senator Durenberger, I would like to enter as an exhibit, a copy from the Warroad Pioneer dated July 8, 1981, and titled "Launch operators fined in Ontario". The article talks about how Canada and the US Fish and Wildlife Service had a three year undercover operation documenting illegal operation by the US launches, which included over the limit fish "under their seats" and then "stashed them on shore" to pick up later. The article also states that the US launches alone take 500,000 or more pounds of fish out of Canadian waters and compares this to the only 300,000 pounds alloted to the Canadian commercial fishermen(also compare this to the 400,000 taken by Ontario sport fishermen). This is in direct contrast to the Lake of the Woods resorter's testimony.

These same resorters advocated and and accomplished destroying the entire commercial fishing industry in Minnesota and it's 100 jobs last year. It is very ironic that these same resorters are now complaining about economic hardship. It casts severe doubts on their testimony and motives, particularly when it has not been established that this user fee has even hurt the resorts.

Senator Durenberger, I was appalled when I heard you give encouragement to the audience to keep spreading stories like "pulling up spikes in the CN Railway". Canada and the US have a very peaceful coexistance and to encourage a bunch of radicals who do not believe in law and order or international independence is wrong. I also urge you to ignore these constantly complaining resorts. Don't they and you realize that the only way to improve tourism on Lake of the Woods is to start having some positive news reports? Talk of war does not help anyone.

Art Johnston

Art Johnston
RR 1, Box 18
Warroad, MN 56763

From the Warroad Pioneer, July 8, 1981

Launch operators fined in Ontario

Concrened about depletion of its walleye fishery by American launches carrying parties of U.S. fishermen into the province for one-day trips, the Canadian province of Ontario has served notice it intends to enforce limitations placed on such activity, according to the Thief River Falls Times.

In an undercover operation begun nearly three years ago, according to Ontario conservation officer Ted Biggs at Rainy River, the provincial officials on June 12 apprehended three launch operators from the Baudette area, impounded their launches and charged the three operators with having more than the legal limit of 18 fish in possession.

The operators appeared Wednesday in court before Judge Albert Cass in Sioux Narrows, Ont., where all entered pleas of guilty to the charge. Officer Biggs listed disposition of the cases as follows:

Ronald Rudd, operator of a launch for Sportsman's Lodge of Baudette, was charged with having 29 fish on board, including 12 of which were placed under the seat. He was fined $600 plus $96 as his share of storage and security for the launch which was placed under guard while impounded.

Roger Koster, who owns his own launch but was operating for Tom's Launch Service, owned by Tom Griffin of Baudette, was fined $500 for having 37 fish in possession and also assesed the $96 storage and security fee.

Mark Lavalla, launch operator for Tom's Launch Service, was fined $500 for having 33 fish in possesion and also ordered to pay the $96 storage and security fee.

In addition to the charges brought by the conservation officials, The Royal Canadian Mounted police charged Koster and Lavalla with landing on Canadian territory without first clearing customs. Lavalla was fined $100 and Koster $300, officer Biggs said. Both had reportedly gone ashore in Canada for shore lunches and the Koster fine was larger because he had gone up on an island to stash fish, Biggs said.

Twelve passengers on the launches when the arrests were made were also charged with being party to the taking of over the legal limit of fish and were each fined $100. Launches and equipment were returned to the owners by the Canadian officials. Attorneys for the defendents cited an estimated $3,000 in lost revenue as a result of the launches being impounded.

Biggs said that testimoney presented at the trial included a statement made by Guy Winterton, fish and wildlife supervisor for the Kenora district, who stated that the limit of 18 fish per boat was enacted to curtail the take of walleyes by American launches. He said the fishery was showing signs of shock from the fishing pressure created by the launches.

Biggs said it had been estimated that U.S. launches operating in Ontario would take a legal catch of 500,000 pounds of walleyes a year, and it has been documented that the actual catch "is a helluva lot more than that". By contrast, he said, the Ontario commercial walleye catch has been reduced from an allowable 600,000 pounds per year three years ago to 300,000 pounds now in an effort to protect the resource.

"We've been cutting our own commercial fishermen's throats," the officer said, "and the idea now is to leave the money in Ontario where Ontario taxpayers pay the bill. The government's attitude is that we look after our own first. We have restricted our commercial fishermen to the point where many are quitting and we're going to have trouble with coarse fish.

It's a real problem."

The undercover operation has been going on for nearly three years, Biggs said, to provide documentation on American launch operations in Canadian waters. He said the operation resulting in the arrests of the three launch operators June 12 involved two Ontario wardens on board the launches, two others on the water to intercept the launches, and eight wardens on the lake shore at various points. Also on board, were one official from the U.S. fish and wildlife service and one from the Minnesota Department of Natural Resources in the event the launches attempted to escape to American waters.

The American officers were not involved in the arrests made by Ontario officers," Biggs said, "but were there more or less for insurance."

Biggs also said the possession limit of 18 fish per boat applies while the boat is being used for fishing. He said there should be no problem for Americans having lake cabins or staying in Canadian resorts in transporting legal possession limits per person in returning by boat to the mainland.

But he also noted that the possession limit of 18 fish per boat would include those consumed in shore lunches, and that some of the fish counted as over the limit in the three cases Wednesday had been eaten in shore lunches.

Judge Cass noted in his summation that the province intended to deal severly with violators of the law on legal limits of walleyes, and that future violations may well result in larger fines and loss of boats and equipment.

PREPARED STATEMENT OF NANCY LAKNER

NORTHERN MINNESOTA IS IN TROUBLE *** WE NEED YOUR HELP

I am speaking for many of the tourism-related firms and communities along the Northern Minnesota border. I have spent countless hours talking to other resorters, outfitters and individuals who report loss of customers, loss of revenue and loss of jobs in the Tourism industry.

When asked what do they attribute this decline to, the overall reaction was that it is the direct result of the Boundary Waters Law PL95-495. Everytime you put restrictions on an area, you lose customers. We are facing that fact now. The environmental groups said that Ely would be a tourist mecca in a few years because of the quote "New Breed" that would come because of the wilderness designation. Where are these people? They are not spending money in our stores or renting our equipment. Most of those who are coming are bringing everything with them and have no need for our services.

Forest Service data shows that between 1983 and 1984, 3,950 less parties visited the Boundary Waters. The average party size is 4.2 which means 16,590 people are no longer coming to northern Minnesota. That loss is directly related to the loss of motor use on Knife Lake, Crooked Lake, and portions of Basswood Lake and others which took effect in January of 1984. Those 16,590 people spent an average of $150 per person which totals a loss of over 2.4 million dollars to Boundary Water

Edge Firms in the Outfitting industry alone. The whole infrastructure of the tourism plant has been destroyed. With every resort the government buys out, we have less of an appeal as a tourist area. By January of 1984, purchase arrangements had been finalized for 18 resorts at a total cost of nearly 6.1 million dollars. Several more have been bought in 1985 and as we near the deadline of September 30, I am sure there will be many more. Several of these properties received grant and low-cost loan monies provided for in the law and then opted to later sell out. Some people are making money because of this law but what about the rest of us still trying to earn a living? Both the Cook and Lake County assessor's offices have shown that the loss to the state in property taxes from properties affected by the buy-out provision total in the thousands of dollars. Who makes up this difference? The rest of us still trying to make a living. The Forest Service has acted promptly in responding to the purchase requests of resorts as required in the act but not to the requirements in the act which would help our communities. In Section 19 of the law, they are required to expedite and intensify the program of dispersed outdoor recreation development on the Superior National Forest outside the Boundary Waters Canoe Area. It states they were to develop remote campsites on lightly-developed lakes, and lake access sites previously available in the BWCA. This has not been done to an extent that it has helped replace what is lost.

The authors of this bill included provisions to mitigate any perceived economic damage to businesses on lakes affected by the law but left out those of us who are just as damaged who are based outside of the protection area. I would like to know why our businesses are being discriminated against?

Ten of my competitors have averaged $32,500 in financial assistance while several of us do not qualify for any assistance. The Forest Service has recently thrown at us an administrative directive called "The Outfitter/Guide Permit" aimed at further restricting our already declining economic situation. This will require us to be further insured to take the liability off the government; they want 3 percent of our gross, adding more paperwork, and putting further restrictions on the American free-enterprise system.

At this point, I would like to ask what difference has my presence here today made? Is this just another exercise in rhetoric or are we actually going to have some of the problems resolved? What can this body or commission do to bring about changes in the policies that have created economic disaster for our area? What I have said here today, I, and many others, have been saying at hearings and meetings just like this one and nothing has been done and nothing has changed. We need fair and equitable solutions to the problems on both sides of the border and if this commission can do that, then we are for its formation.

Thank you.

Nancy Lakner
Boundary Waters Canoe Outfitters
Ely

Statement for the Record

of Donald Parmeter

Before the U.S. Senate Subcommittee on

Intergovernmental Relations

International Falls, Minnesota

August 23, 1985

Mr. Chairman, my name is Don Parmeter. I'm an independent consultant from International Falls, and I've recently completed a report entitled "An Assessment of U.S.-Canadian Boundary Waters Issues Along the Minnesota-Ontario Border." This report was sponsored by several private and public organizations here in Minnesota.

While it's easy to get caught up in some of the specific issues involving the boundary waters resources separating Minnesota and Ontario, I think for the purpose of this hearing, it is more important to recognize that there is a fundamental problem at the heart of all of these issues. And I think the fundamental problem is this: That agencies of the federal, state, and provincial governments have been allowed to act with independent authority without due regard to the authority and legitimate interests of others. The consequences of this fundamental problem include: 1) conflicts with the purposes and principals of existing international agreements, 2) inconsistent and confusing government policies and regulations, and, 3) a piecemeal approach to resource management of the waters separating Minnesota and Ontario. The specific issues that have surfaced in recent years are really symptoms of this larger problem. And until we recognize and resolve the larger problem, we'll be forced to continue dealing with symptoms - - symptoms which are likely to get worse in the future.

There is an existing international agreement that is sound in principle - the Root-Bryce Treaty of 1909 - that should serve as a basis for addressing the larger problem and for the satisfactory resolution of the specific issues. The Treaty, above all else, recognizes that the waters separating the U.S. and Canada are shared resources that deserve special consideration. And notwithstanding the specific provisions of Article I, the essence of that agreement is that the respective governments - and their instrumentalities - must be willing to sacrifice autonomy in regard to the portions of the boundary waters within their own territory. And herein lies the difficult challenge: Convincing government agencies to sacrifice something - to give up some of their authority when they have not demonstrated a willingness to do so on their own.

I believe it is accurate to say that we can no longer tolerate independent management of the border resources. Therefore, establishment of a bilateral organization is not only timely and appropriate, but necessary. It is necessary to provide an opportunity for the governments and their agencies to engage in joint cooperative management of the boundary waters resources, to develop policies and regulations that are fair, coordinated, and uniform to the greatest extent possible, and to jointly conform to the purposes and principles of existing international agreements.

With specific regard to the function and scope of the proposed commission, I would offer the following suggestions:

1. That the commission's geographic scope of interest include those waters separating Minnesota and Ontario that are defined by existing international agreement as U.S.-Canadian boundary waters, i.e., the waters through which the international boundary passes.

2. That the commission address the issues involving use of those waters and, as a practical matter, the lands riparian to the waters.

3. That the commission be given the specific mission of preparing a management plan for the border waters, and to make recommendations within a specified time period for implementing that plan.

4. That the commission recommend a permanent institutional arrangement for preventing disputes and conflicts in the future.

5. That provisions be made to require or allow the appropriate government agencies to participate in the activities of the commission by providing assistance at the policy and technical level.

Mr. Chairman, that concludes my statement.

BRIEFING PAPER
ON
INTERNATIONAL RAINY LAKE BOARD OF CONTROL
INTERNATIONAL LAKE OF THE WOODS CONTROL BOARD

NOVEMBER 1984

SUBMITTED TO

THE INTERNATIONAL JOINT COMMISSION

SEMI-ANNUAL MEETING
WINNIPEG, MANITOBA

CANADA		UNITED STATES	
J.E. Slater	Member	Col. E.G. Rapp	Member
R.F. Walden	Secretary	E.G. Eaton	Secretary

PREFACE

The International Boards of Control for Rainy Lake and Lake of the Woods were requested by the International Joint Commission (IJC) to make a combined presentation to the Commission at its November 1984 Semi-Annual Meeting. As these Boards do not normally appear before the Commission, a comprehensive briefing paper was prepared. Its purpose was to brief the Commission on the regulatory agencies in the basin, on basin features, on current and historic water regulation and on current concerns.

This paper, except for minor revisions, is identical to the paper submitted to the IJC at that time. The paper is now being released for public distribution in the belief that it may provide useful information for others with an interest in water level regulation in the Rainy-Namakan and Lake of the Woods Basins.

The views presented herein are those of the Control Boards but not necessarily those of the IJC.

April 1985

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1. INTRODUCTION

The international boundary waters shared by Canada and the United States represent a vast and important natural resource. The abundant water resources found along the common boundary are utilized by various interests which include hydropower, water supply, forest products, navigation, tourism, parks, fisheries, and agriculture. To insure that this important resource would be used wisely, the governments of Canada and the United States signed, in 1909, the "Boundary Waters Treaty".

The Winnipeg River Drainage Basin, shown in the Appendix, was one of the first boundary waters areas in which the terms of this treaty were utilized to initiate comprehensive water resource studies and to subsequently establish and implement internationally approved water management policies. Four water management boards are currently active in this basin. One of these, involved with water quality, is the Rainy River Pollution Advisory Board. The other three are water quantity Control Boards. Two of these, the International Rainy Lake Board of Control (IRLBC) and the International Lake of the Woods Control Board (ILWCB), are international boards which report to the International Joint Commission (IJC). The portion of the Winnipeg River basin of concern to these Boards is highlighted in green on the basin map. The third Control Board, the Lake of the Woods Control Board (LWCB), is a wholly Canadian Board. A fifth board, now discontinued, was the International Prairie Portage Board of Control which existed from 1939 to 1975. Its purpose was to oversee the reconstruction of the dam at Prairie Portage which was seriously damaged in the flood of 1938.

This briefing paper will focus on the two current International Control Boards, with some information on the Canadian Board as necessary to complete the picture of water quantity management in the basin. Topics addressed will include a description of board jurisdictions, a basin description, a history of regulation, hydroclimatology perspectives on the future, board concerns, and concerns of water interest groups within the Lake of the Woods and Rainy Lake watersheds.

2. BASIN ADMINISTRATION

2.1 Control Boards

Following the Boundary Waters Treaty and the creation of the International Joint Commission (IJC) in 1909, the governments of Canada and the United States submitted the Lake of the Woods Reference (IJC Docket 3) to the Commission in 1912. This reference pertained to the regulation of the level of Lake of the Woods. The Commission issued its final report in 1917, which ultimately led to the 1925 Convention and Protocol between the two countries. This document created the International Lake of the Woods Control Board (ILWCB), called for the establishment of a Canadian Lake of the Woods Control Board (LWCB), and defined the duties of each Board. It also defined the objective of regulation and the range of lake levels to be utilized on Lake of the Woods. Basically the Canadian Board was given sole regulation responsibility as long as the level of Lake of the Woods remains in the 1056 - 1061 ft. range sea level datum (321.87 - 323.39 m), but with the total discharge being subject to the approval of the International Board whenever the lake level rises above or falls below this range. Subsequent to the Convention and Protocol, the International Board was established with the appointment of two members, one Canadian and one American, by their respective governments. Although this Board is not strictly an IJC Board since the IJC did not create it and does not appoint its members, nevertheless the Board reports to the IJC. As to the Canadian Board called for in the Convention and Protocol, it was actually established in 1921, in the expectation that the recommendations of the Lake of the Woods Reference (completed in 1917) would be adopted by the two governments. The ratification of the Convention and Protocol in 1925 confirmed the jurisdiction of this Board. The Canadian Board consists of 4 members. Initially two were appointed by the Canadian federal government and two were appointed by the government of the province of Ontario. Since 1958 one member represents the Canadian federal government, two members represent the province of Ontario and one member represents the province of Manitoba. This Board was also given responsibility, by legislation, for the regulation of other wholly Canadian waters, including Lac Seul on the English River, which is a major tributary to the Winnipeg River downstream of Lake of the Woods.

Concurrent with the signing of the 1925 Convention and Protocol and actually included as one of its terms, the governments of Canada and the United States submitted the Rainy Lake Reference (IJC Docket 20) to the Commission. This reference pertained to the regulation of levels of Rainy and Namakan Lakes and the provision of storage facilities on the boundary waters above Namakan Lake. The Commission issued its final report in 1934. This led to the 1940 Convention between the two countries, which empowered the Commission to determine when emergency conditions exist in the Rainy Lake watershed

due to either high or low water and to adopt control measures as required at the dams in the basin during such conditions. The Commission subsequently created the International Rainy Lake Board of Control (IRLBC) and appointed its first members, one Canadian and one American, in 1941. This Board initiated studies to fulfill the Commission's obligations under the 1940 Convention. These studies led to the issuance of the IJC's 1949 Order defining when emergency conditions exist and prescribing the method of regulating levels to preclude the occurrence of such conditions on Rainy and Namakan Lakes. This Order, through further input from the public and advice from the Board, was subsequently amended by Supplementary Orders in 1957 and 1970. These Orders also defined the duties of the IRLBC, these being primarily to monitor the regulation of Rainy and Namakan Lakes to ensure that the dam owners follow the Orders, and to advise the IJC concerning watershed conditions as necessary. More recently, since the construction in 1975 of a permanent dam at Prairie Portage just upstream of Basswood Lake, the International Prairie Portage Board of Control was discontinued and any further duties related to this site were added to the jurisdiction of the IRLBC.

To ensure coordination within the basin and between the two countries, the membership of the two International Boards has traditionally been identical and the Canadian member on the International Boards has traditionally been the Canadian federal member on the Canadian Board. Figure 1 summarizes the origins of the three active Control Boards outlined above. It also shows the relation of these Boards with their support groups and the dam owners in the basin. Figure 2 presents a basin schematic summarizing the jurisdictions of the three Boards. Figure 3 summarizes the appointment process and current membership of the three Boards.

2.2 Support Groups

As shown in Figure 1, the three Control Boards are assisted in their duties by two engineering support groups, one in Canada and one in the United States. In Canada support is provided by the Lake of the Woods Secretariat. This unit, although housed in Ottawa in the offices of the Inland Waters Directorate of Environment Canada, is an autonomous unit which reports directly to the Canadian LWCB and is jointly funded by the governments of Canada, Ontario and Manitoba. Its main duties include the monitoring of conditions in the Winnipeg River Basin, provision of information and recommendations, production of reports and Board administration work. By agreement between the LWCB and the Inland Waters Directorate, the Secretariat also addresses the regular needs of the two International Boards. These include monitoring of lake levels, contact with dam owners as necessary, participation in annual public meetings and annual report preparation. In this role the Secretariat reports directly to the Canadian member on the International Boards. In summary the Secretariat is involved full-time with regulation in the Winnipeg River Basin but not always for the same jurisdiction.

FIGURE 1

ADMINISTRATIVE ORIGIN AND STRUCTURE

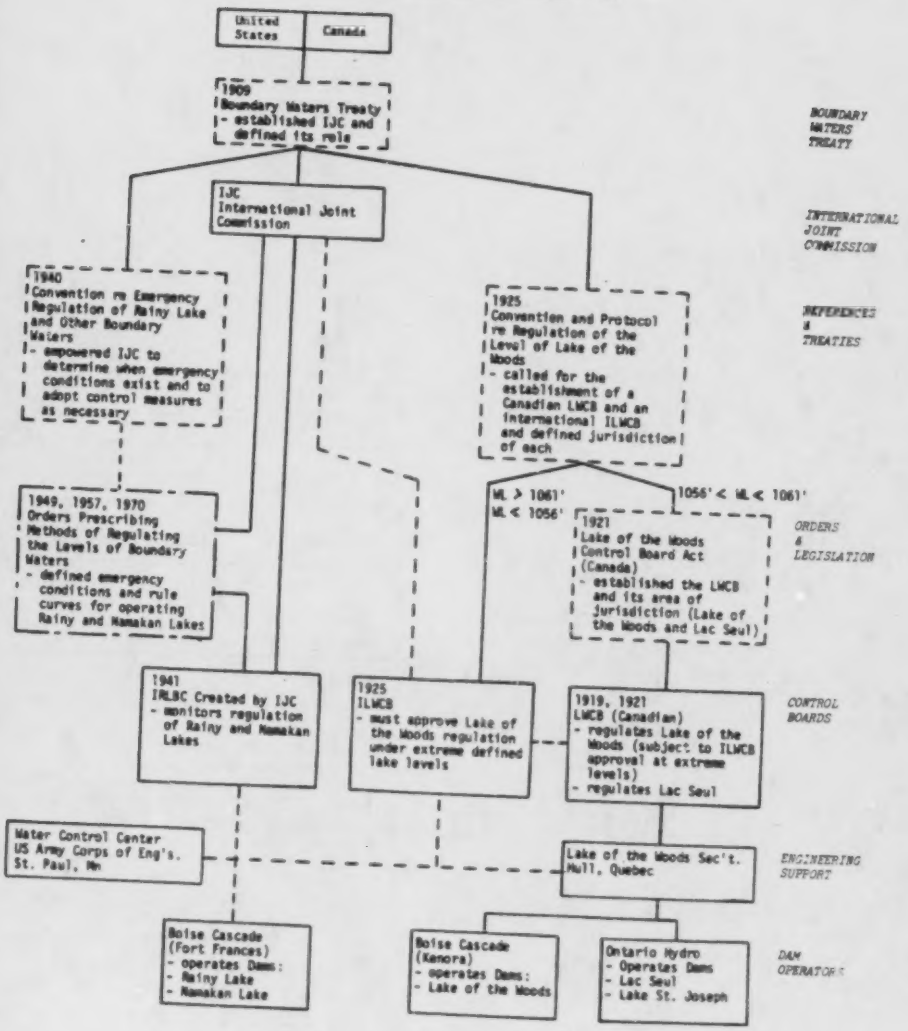
United States
Canada
1909
Boundary Waters Treaty
- established IJC and defined its role
BOUNDARY WATERS TREATY
IJC
International Joint Commission
INTERNATIONAL JOINT COMMISSION
1940
Convention re Emergency Regulation of Rainy Lake and Other Boundary Waters
- empowered IJC to determine when emergency conditions exist and to adopt control measures as necessary
1925
Convention and Protocol re Regulation of the Level of Lake of the Woods
- called for the establishment of a Canadian LWCB and an international ILWCB and defined jurisdiction of each
REFERENCES & TREATIES
1949, 1957, 1970
Orders Prescribing Methods of Regulating the Levels of Boundary Waters
- defined emergency conditions and rule curves for operating Rainy and Namakan Lakes
ML > 1061'
ML < 1056'
1056' < ML < 1061'
1921
Lake of the Woods Control Board Act (Canada)
- established the LWCB and its area of jurisdiction (Lake of the Woods and Lac Seul)
ORDERS & LEGISLATION
1941
IRLBC Created by IJC
- monitors regulation of Rainy and Namakan Lakes
1925
ILWCB
- must approve Lake of the Woods regulation under extreme defined lake levels
1919, 1921
LWCB (Canadian)
- regulates Lake of the Woods (subject to ILWCB approval at extreme levels)
- regulates Lac Seul
CONTROL BOARDS
Water Control Center
US Army Corps of Eng's.
St. Paul, Mn
Lake of the Woods Sec't.
Hull, Quebec
ENGINEERING SUPPORT
Boise Cascade
(Fort Frances)
- operates Dams:
- Rainy Lake
- Namakan Lake
Boise Cascade
(Kenora)
- operates Dams:
- Lake of the Woods
Ontario Hydro
- Operates Dams
- Lac Seul
- Lake St. Joseph
DAM OPERATORS

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FIGURE 2

BASIN SCHEMATIC AND BOARD JURISDICTIONS

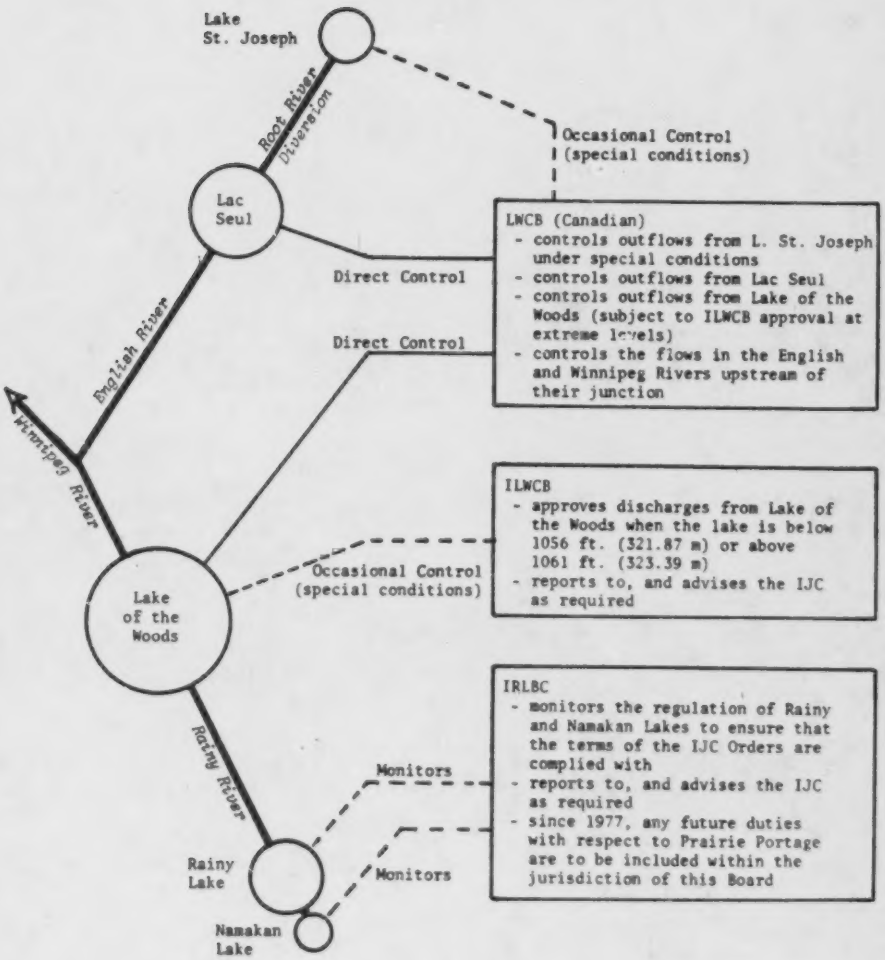
Lake
St. Joseph
Root River
Diversion
Occasional Control
(special conditions)
Lac
Seul
LWCB (Canadian)
- controls outflows from L. St. Joseph under special conditions
- controls outflows from Lac Seul
- controls outflows from Lake of the Woods (subject to ILWCB approval at extreme levels)
- controls the flows in the English and Winnipeg Rivers upstream of their junction
Direct Control
Direct Control
English River
Winnipeg River
ILWCB
- approves discharges from Lake of the Woods when the lake is below 1056 ft. (321.87 m) or above 1061 ft. (323.39 m)
- reports to, and advises the IJC as required
Occasional Control
(special conditions)
Lake
of the
Woods
IRLBC
- monitors the regulation of Rainy and Namakan Lakes to ensure that the terms of the IJC Orders are complied with
- reports to, and advises the IJC as required
- since 1977, any future duties with respect to Prairie Portage are to be included within the jurisdiction of this Board
Rainy River
Monitors
Rainy
Lake
Monitors
Namakan
Lake

FIGURE 3

Board Origin and Membership

IRLBC - International Rainy Lake Board of Control
- established by the IJC in 1941
- 2 members, one Canadian and one American, are appointed by the IJC
- current members are: - Col. E.G. Rapp, Member for the United States
  - Mr. J.E. Slater, Member for Canada

ILWCB - International Lake of the Woods Control Board
- established by the 1925 Convention and Protocol between Canada and the United States re Regulation of the Level of Lake of the Woods
- 2 members, one Canadian and one American, are appointed by their respective governments
- the Board reports through the IJC for convenience
- current members are: - Mr. J.E. Slater, Member for Canada
  - Col. E.G. Rapp, Member for the United States

LWCB - Lake of the Woods Control Board (Canadian)
- established by Canadian legislation in 1921
- given International Authority by the Convention and Protocol of 1925
- 4 members are appointed by Canadian Federal and Provincial Governments
- current members are: - Mr. J.E. Slater, Member for Federal Gov't
  - Mr. T.E. Falk, Member for Ontario
  - Mr. R.M. Odell, Member for Ontario
  - Mr. N. Mudry, Member for Manitoba
- to ensure coordination with the United States, the federal member on the LWCB is the Canadian member on the ILWCB and the IRLBC.

ENGINEERING SUPPORT
- support to the above Boards for day-to-day duties and other technical activities as required is provided by:

  in Canada - Lake of the Woods Secretariat
  Executive Engineer - R.F. Walden

  in the United States - Water Control Centre
  St. Paul District Corps of Engineers
  Chief - E.G. Eaton

In the United States support is provided by the Water Control Centre of the U.S. Army Corps of Engineers District Office in St. Paul. This unit carries out regulatory duties with respect to Corps projects in the Red, Rainy, Souris and Upper Mississippi River Basins. It also provides support as needed to IJC Boards in the first three of these Basins. A major duty is control of the navigation system on the Upper Mississippi River. The role played by the Water Control Centre in supporting the United States member of the IRLBC and ILWCB is similar to that described above for the Secretariat.

Close liaison is maintained between the two support groups. Contacts in each are given in Figure 3.

2.3 Dam Owners and Operators

The dams and powerhouses by which regulation of Lake of the Woods, Rainy Lake and Namakan Lake is effected are owned and operated by Boise Cascade Corporation. The structures controlling Lake of the Woods are administered by the company office in Kenora. Outflows from Lake of the Woods are determined and specified by the Canadian LWCB, either solely or in consultation with the ILWCB. The company then makes the appropriate changes to turbine and/or sluiceway stop-log settings in order to release the required flow.

The structures controlling Rainy and Namakan Lakes are administered by the company office in Fort Frances. Regulation of these lakes is normally conducted by Boise Cascade in accordance with the rules defined by the IJC Orders. The IRLBC monitors the operations of the company but only becomes involved in regulation if the IJC Orders are not or cannot be followed.

2.4 Information Services

In April 1984 the IRLBC held its 19th annual public meeting in the Rainy Lake watershed. These meetings are hosted alternately each year on the Canadian and the United States sides of the basin. Through these meetings the Board has attempted to maintain a presence in the basin and to continue the sense of public participation initiated by the Commission with its public hearings held during the Rainy Lake Reference and prior to each of its Orders. At these meetings watershed conditions over the past year are reviewed, prospects for the upcoming inflow season are discussed, and the public are given a chance to make known their concerns to the Board. At this year's meeting two presentations were also made of a more educational nature; one concerning the impact of climatic variations on watershed hydrology and management, and one on the relative importance of snowpack and spring rains on spring runoff. Both of these presentations were well received. Summaries of the past two annual meetings are available.

Similar annual meetings have also been held for some time by the ILWCB. However, in the past two years the meetings were not held as no one from the public attended at the scheduled time. Consequently the ILWCB has discontinued these meetings until warranted by renewed public interest or extreme lake conditions.

In addition to the public meetings, both International Boards prepare Annual Reports to the IJC each spring. These traditionally review basin conditions over the past year but also draw issues of concern to the attention of the Commission whenever warranted.

As the only full-time operational Board in the basin, the Canadian LWCB attempts to maintain a somewhat higher profile. Public meetings are held each spring at one or more sites in the basin and, if conditions warrant, may be held in the fall also. By Board by-law a minimum of three Regulation Meetings are held in the basin each year. This facilitates the attendance of a number of Representatives of Specific Interest Groups recognized by the Board in this area. These include camp owners and cottage owners associations, pulp and paper and hydroelectric interests and native peoples.

To make the public more aware of regulation in the basin, the LWCB has produced a public information brochure entitled "Managing the Water Resources of the Winnipeg River Drainage Basin". A copy is attached. Through its Secretariat, the Board also releases regular summaries of basin conditions. Recorded messages giving lake levels and flows are updated weekly and are available locally by telephone in Kenora and Winnipeg. A Water Level and Flow Bulletin is produced bimonthly and mailed to interested members of the public. A more technical Provisional Report, which summarizes levels, flows and precipitation throughout the entire Winnipeg River basin, is produced weekly and mailed to a limited distribution list. The Canadian Section of the IJC is a recipient of this report. This report is also available by direct computer access to Board Members and has been offered by this means to other parties such as Boise Cascade in Fort Frances. Recent examples of the Bulletin and the Provisional Report are shown in Figures 4 and 5 respectively. The LWCB also produces an Annual Report.

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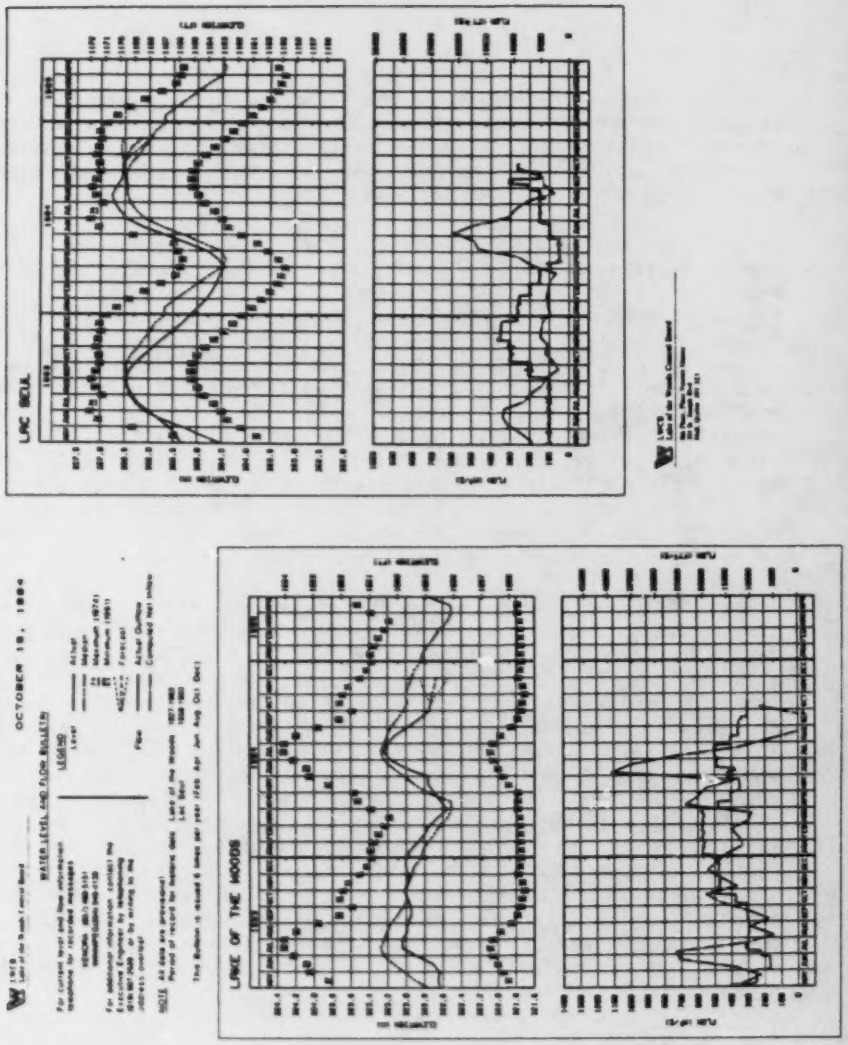

LAC BEAUL
LAKE OF THE WOODS
OCTOBER 10, 1984
WATER LEVEL AND FLOW BULLETIN

FIGURE 4

FIGURE 5

LAKE OF THE WOODS CONTROL BOARD — ISSUED: 841101

PROVISIONAL REPORT

PERIOD ENDING:	1984 10 30			1984 10 30								
	BASIN PRECIPITATION			LAKE ELEVATION			7 DAY FLOWS		14 DAY FLOWS			
	7 DAY	30 DAY	30 DAY % OF NORMAL	END ELEV	CHANGE IN 7 DAYS	STORAGE STATUS	OUTFLOW	INFLOW	OUTFLOW	INFLOW	MEDIAN & %'ILE	
	MM (IN)	MM (IN)	%	M (FT)	M (FT)	% OR M (FT)	CMS (CFS)	CMS (CFS)	CMS (CFS)	CMS (CFS)	CMS %	
ENGLISH SYSTEM												
Cat River							28.6 (1010)		27.6 (974)		49.3 15%	
LAKE ST JOSEPH	16 (.6)	73 (2.9)	125%	*	*		100 * (3530)	*	100 * (3530)	*	82.5	I
Sturgeon River Mcdowall Mills							12.6 (446)		12.5 (440)		27.5 LT10%	
English River Umfreville							22.2 (783)		21.2 (750)		44.4 20%	
LAC SEUL	12 (.5)	80 (3.2)	134%	356.460 (1169.51)	-.013 (-.04)	84%	299 (10600)	269 (9520)	298 (10600)	196 (6940)	259 39%	I
Chukuni River							27.48 (968)		20.83 (732)		28.6 36%	
English River Manitou							349 (12300)		378 (13400)			
Wabigoon River Quibell							25 * (883)		29.18 (700)		32.7 LT10%	
English River Caribou	19 (.7)	120 (4.7)	254%				373 (13200)		345 (12200)			
WINNIPEG SYSTEM												
Basswood Lake				395.999 (1299.21)	.035 (.11)		6.7 (237)		6.5 (229)		21.2 LT10%	
LAC LA CROIX	7 (.3)	72 (2.8)	141%	360.388 (1182.38)	-.02 (-.07)		34.3 (1210)		35.2 (1240)		60.3 16%	
Vermilion River							*		*			
NAMAKAN AND KABETOGAMA LAKES				340.388 (1116.76)	-.027 (-.09)	31%	62.1 (2190)	51.1 (1810)	62.2 (2200)	61.6 (2180)	107 40%	I
Seine River Sturgeon Falls							18 (634)		23.1 (816)		43.1 17%	
RAINY LAKE	5 (.2)	97 (3.4)	182%	337.477 (1107.21)	-.013 (-.04)	-.009 (-.03)	136 (4810)	118 (4150)	146 (5190)	161 (5690)	193 34%	I
Fork Rivers							92.18 (3250)		82.38 (2910)		26.2 82%	
Rainy River Manitou Rapids							340 (12000)		303 (10700)		280 55%	
LAKE OF THE WOODS	4 (.2)	116 (4.6)	273%	322.855 (1059.24)	.049 (.16)	62%	384 (10800)	615 (21700)	384 (10800)	649 (22900)	220 85%	I
Winnipeg River Slave Falls	21 (.8)	130 (5.1)	333%				655 (23100)		654 (23100)		692 44%	

NOTE: * DENOTES MISSING DATA

COMMENTS:

3. BASIN DESCRIPTION

3.1 Topography, Hydrology and Climate

The Lake of the Woods basin forms part of the headwaters of the Hudson Bay watershed, draining an area of 27,200 square miles (70,400 square kilometers), of which 42 percent is in the United States and 58 percent is in Canada. Approximately 18 percent of the total drainage area consists of an intricate network of lakes, largely rockbound, and connecting streams, of which 70 percent lie within Canada and 30 percent within the United States. This vast area may be conveniently divided into two sub-basins, namely: the Rainy Lake watershed with its outlet at Fort Frances/International Falls, draining an area of 14,900 square miles (38,600 square kilometers); and the remainder of the Lake of the Woods watershed below International Falls, draining an area of 12,300 square miles (31,800 square kilometers) and having 2 outlets near Kenora, Ontario. The Rainy Lake watershed provides nearly 70 percent of the total inflow to Lake of the Woods. Rainy Lake, at the foot of this watershed, is the largest of the principal lakes in the basin, which include Rainy, Namakan, Kabetogama, Crane, Vermillion, Lac La Croix, Basswood, Pickeral and Saganaga.

The principal drainage course of the water, tributary to the Lake of the Woods, commences in North Lake on the International Boundary, some 210 miles (338 kilometers) to the east of Rainy Lake. Flow is generally in a northwesterly direction along the International Boundary until reaching Lake of the Woods. After leaving Lake of the Woods, the waters flow down the Winnipeg River into Lake Winnipeg and ultimately into Hudson Bay by way of Nelson River.

In general, the entire Lake of the Woods watershed is forested and characterized by frequent outcrops of Precambrian igneous, metamorphic and sedimentary rocks, thin soil cover, numerous lakes, ponds and connecting channels. The watershed between Rainy Lake and Lake of the Woods is generally rather flat and swampy with a vertical fall of only 50 feet (15 m), on average, from Rainy Lake to Lake of the Woods. By comparison, the vertical fall from the headwaters of the Rainy watershed to Rainy Lake is approximately 440 feet (135 m).

The climate of the Lake of the Woods watershed is characterized by long severe winters with snow typically on the ground from November through April. Mean annual precipitation is about 27 inches (680 mm) with 30 percent of this amount in the form of snowfall. Mean annual lake evaporation in the watershed is approximately 25 inches (635 mm), while mean annual evapotranspiration (total evaporation loss to the atmosphere from all sources) averages 19 inches (490 mm) over the basin or about 72 percent of the mean annual precipitation.

Normally the winter months, December through March, are the driest, while June, July and August are the months with the greatest amount of precipitation. Extreme temperatures range from about -50°F to +100°F (-45°C to 38°C) with January being the coldest month and July the warmest. River and lake freeze-up occur by December 1 on the average. In the spring, river breakup normally occurs by April 15 with lake breakup following about 2 weeks later. Major rivers in the watershed normally reach their highest flows during the spring melting season of April, May and June.

The Winnipeg River basin is shown in detail on the basin map in the Appendix. The Lake of the Woods sub-basin and the Rainy-Namakan sub-basin are highlighted in green. In addition, the basin is shown in schematic form in Figure 6. The lakes are scaled to show their relative areas, storage factors and mean flows are given, and drainage areas above certain points are given in both absolute terms and as a percentage of the total area to the main lakes (Lake of the Woods and Lac Seul).

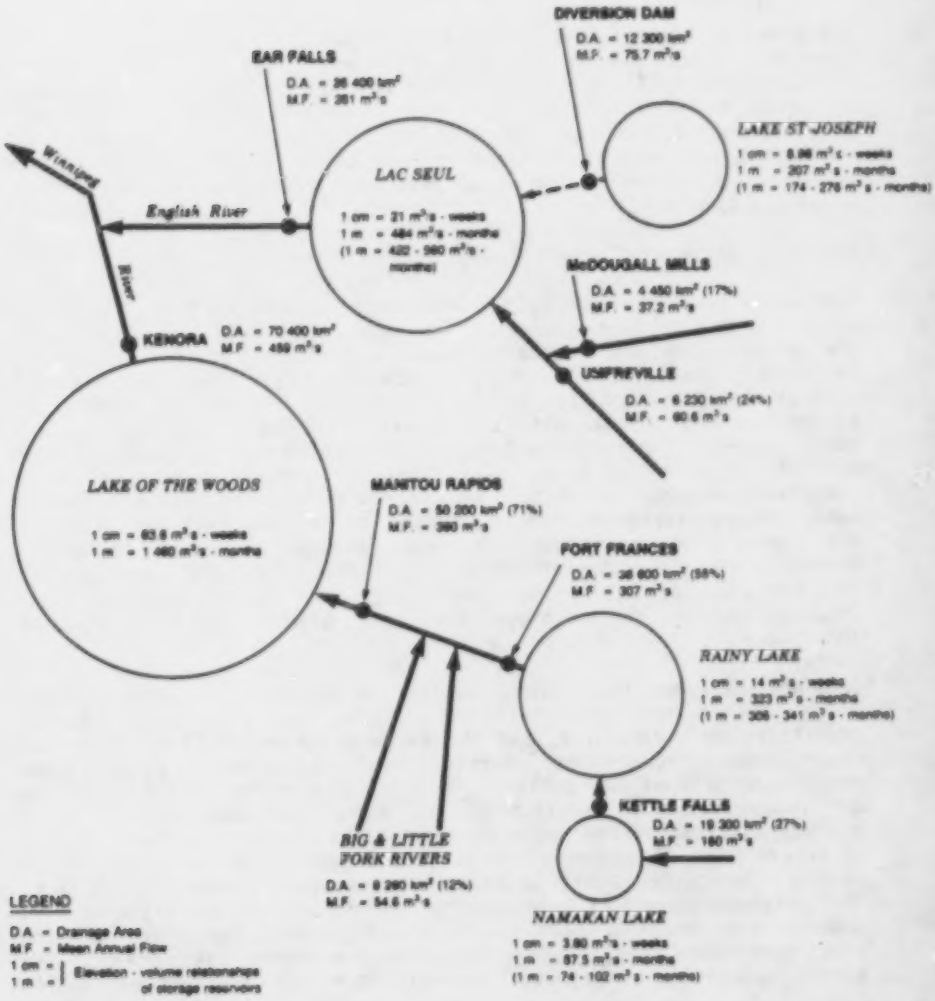
3.2 Hydraulic Structures and Features

Hydraulic structures of major importance in the Lake of the Woods watershed are located at Kenora, Ontario, at the outlets of Lake of the Woods; at Fort Frances/International Falls, at the outlet of Rainy Lake; at Kettle Falls, Minnesota, at the outlets of Namakan Lake, and at Prairie Portage at the inlet to Basswood Lake. All of these structures with the exception of Prairie Portage Dam are owned and operated by Boise Cascade Corporation for the generation of electricity used in plant operations. Prairie Portage dam is an uncontrolled concrete weir, whose purpose is to maintain a stable connecting waterway on Sucker, Birch, Moose, and Newfound Lakes in the upper Rainy watershed. The dam is owned and operated by the United States Forest Service. In addition, natural outflows at Gold Portage at the northwest end of Kabetogama Lake, and Bear Portage on the northern shore of Namakan Lake are also of importance.

Lake of the Woods has 2 major outlets at Kenora; the western outlet which carries well over half the outflow from Lake of the Woods, controlled by Norman Dam, and the eastern outlet, controlled by the Kenora generating station. Norman Dam was put into service in 1898 for the benefit of navigation. In 1925, the centre rockfill section was removed for construction of the Norman powerhouse in order to produce electricity for paper production. The dam is a stone-masonry structure with 20 stop-log controlled sluices, 9 on one side and 11 on the other side of the powerhouse. Stop-log movement is still by the original equipment provided for this purpose, an electrically-powered spud winch mounted on rails over the sluices. In 1966 the pier noses were rebuilt with concrete and faced with steel. The Kenora generating station was built in 1906 and later rebuilt to its

FIGURE 6

WINNIPEG RIVER WATERSHED
BASIN SCHEMATIC


DIVERSION DAM
D.A. = 12 300 km²
M.F. = 75.7 m³/s
EAR FALLS
D.A. = 26 400 km²
M.F. = 261 m³/s
LAKE ST JOSEPH
1 cm = 8.86 m³/s - weeks
1 m = 207 m³/s - months
(1 m = 174 - 276 m³/s - months)
LAC SEUL
1 cm = 21 m³/s - weeks
1 m = 484 m³/s - months
(1 m = 422 - 560 m³/s - months)
Winnipeg
English River
River
McDOUGALL MILLS
D.A. = 4 450 km² (17%)
M.F. = 37.2 m³/s
KENORA
D.A. = 70 400 km²
M.F. = 459 m³/s
USHPREVILLE
D.A. = 6 230 km² (24%)
M.F. = 60.6 m³/s
LAKE OF THE WOODS
1 cm = 63.6 m³/s - weeks
1 m = 1 460 m³/s - months
MANITOU RAPIDS
D.A. = 50 200 km² (71%)
M.F. = 390 m³/s
FORT FRANCES
D.A. = 36 600 km² (59%)
M.F. = 307 m³/s
RAINY LAKE
1 cm = 14 m³/s - weeks
1 m = 323 m³/s - months
(1 m = 308 - 341 m³/s - months)
KETTLE FALLS
D.A. = 19 300 km² (27%)
M.F. = 160 m³/s
BIG & LITTLE FORK RIVERS
D.A. = 8 260 km² (12%)
M.F. = 54.6 m³/s
NAMAKAN LAKE
1 cm = 3.60 m³/s - weeks
1 m = 97.5 m³/s - months
(1 m = 74 - 102 m³/s - months)
LEGEND
D.A. = Drainage Area
M.F. = Mean Annual Flow
1 cm = | Elevation - volume relationships
1 m = | of storage reservoirs

present configuration in 1923. All water flowing out the eastern outlet is used for power generation or log flume operations, although this latter use is expected to cease in 1985. In addition to these major outlets there is a minor diversion of water from Lake of the Woods via Shoal Lake. In 1914 the City of Winnipeg was authorized by the IJC (Docket 7) to withdraw up to 100 MIGD (186 ft^3/s) (5.27 m^3/s) for domestic and sanitary purposes.

The outlet of Rainy Lake has been controlled since 1909 by an international dam extending between Fort Frances, Ontario, and International Falls, Minnesota, at the site of the former Koochiching Falls. The dam is of stone-masonry construction and is U-shaped, with the apex pointing upstream. Ten gate-controlled arched sluiceways are on the Canadian side, while the apex and American side are designed as a free spillway section. An additional 5 gate-controlled sluiceways discharge into a never-used navigation canal on the Canadian side. In the mid-1970's concrete repair work was done to the piers and gate slots of all sluices. Two powerhouses also exist at this site, one on each side of the river, each between the main dam and the shore. The Canadian powerhouse was extensively rebuilt in the 1950's. The American powerhouse is still original but plans exist to upgrade its equipment.

Above Rainy Lake at Kettle Falls, the outlet of Namakan Lake, flow has been controlled since 1914 by two small dams. One, entirely located within Canada (at the former Squirrel Falls) is known as the Canadian Dam, and the other, straddling the international border, is known as the International Dam. No power is generated (or available) at this site and access is still only by boat or plane. Both structures consist of 5 stop-log controlled sluices; one of these in each dam was constructed as a fishway but neither one has been used as such. These structures were originally of stone-masonry construction but, due to severe deterioration, were rehabilitated between 1962 and 1969. All piers and wing walls were completely encased in concrete and some pier noses were reshaped with steel facing. No improvements have been made to stop-log handling equipment. At the International Dam a diesel powered winch is available but at the Canadian Dam only manual chain hoists are used.

In addition to the aforementioned structures, the two natural overflows at Gold Portage and Bear Portage are significant because they provide flow paths from Namakan Lake to Rainy Lake which bypass the regulatory dams at Kettle Falls. Control of Namakan reservoir is thus diminished in proportion to the capacity of these overflows. Historically Bear Portage overflow was probably more significant than Gold Portage. Although both appear on maps accompanying the Rainy Lake Reference, a timber and stone crib was constructed to inhibit flows at Bear Portage and the 1949 IJC Orders specified that this was not to be altered or maintained. More recently Gold Portage has become the more significant overflow. The overflow was stable

until the mid-1950's when apparently it was enlarged by local residents. Since that time it has enlarged further through erosion, the removal of a logging road which acted as a partial dam across the channel, and possible further tampering. In 1958 the flow through Gold Portage with Namakan Lake at elevation 1118.0 ft (340.77 m) was 45 ft^3/s (1.3 m^3/s); by 1981 it had increased to 490 ft^3/s (13.9 m^3/s) and is currently rated at 510 ft^3/s (14.4 m^3/s) at this elevation. In contrast, the Bear Portage flow at this elevation is 60 ft^3/s (1.7 m^3/s). Flows commence at Gold Portage when Namakan Lake elevation reaches 1113.5 ft. (339.39 m) and at Bear Portage at an elevation of 1116.8 ft. (340.40 m).

3.3 Data Collection

Monitoring of basin conditions is carried out on a continual basis by the Water Control Centre in St. Paul and by the Lake of the Woods Secretariat in Ottawa. Throughout the year water level, flow and precipitation data are collected on either a daily, twice-weekly or weekly basis, depending on the site and the type of data. As well, during the winter, snow cover is monitored and during the first week of March each year a cooperative Canada-U.S. snow survey is carried out on behalf of the International and Canadian Boards.

Currently about 75% of the hydrometric gauging sites in the Lake of the Woods and Rainy-Namakan Basins are equipped with either landline or satellite telemetering equipment. The installation of this type of equipment in recent years has led to vastly improved capability of monitoring current conditions within the basin and has enabled the computation of 24-hour mean levels and flows on a real-time basis. The density of the total network has been increased gradually as well. Currently, there are 9 near real-time hydrometric stations in the Lake of the Woods basin (5 in Canada, 4 in the U.S.) and 14 in the Rainy-Namakan basin (8 in Canada, 6 in the U.S.). As well as receiving this data directly from site-based microprocessors by landline or through access to satellite receive sites, some of this data is also retrieved through personal communication, including twice-weekly contact with Boise Cascade personnel in Fort Frances.

Precipitation data is currently collected on at least a weekly basis from approximately 9 sites in the Lake of the Woods basin (6 in Canada, 3 in the U.S.) and 7 in the Rainy-Namakan basin (4 in Canada, 3 in the U.S.). Some of this data is available daily from the Canadian Atmospheric Environment Service or from the U.S. National Weather Service. The remainder of the data is retrieved through communication with volunteer meteorologic observers in both Canada and the United States. Currently, plans are underway to expand the collection of near real-time precipitation data, especially from Manitoba and Minnesota.

The March 1 snow survey carried out annually for the Boards includes 13 snow courses in the United States sampled by the U.S. Army Corps of Engineers and 14 in Canada sampled by the Water Resources Branch of Environment Canada. Other snowpack accumulation data from the basin is also monitored at frequent intervals throughout the winter. Sources of this data include Ontario Hydro, the Atmospheric Environment Service, Manitoba Department of Natural Resources, the Ontario Ministry of Natural Resources, and the Minnesota State Department of Natural Resources.

The main data collection sites are shown on the basin map in the Appendix.

3.4 Regional Economy and Water Interests

The Lake of the Woods watershed encompasses portions of five northern Minnesota counties as well as parts of two Canadian provinces, Ontario and Manitoba. This region is sparsely populated and recent trends indicate this situation is not likely to change in the near future. A population growth of only eight percent occurred between 1970 and 1980 in the United States portions of the region, while Canadian portions have experienced a general decline during the period. Cities and towns in the region are few and scattered with the major population centers being Kenora and Fort Frances in Ontario, and International Falls, Baudette, and Warroad in Minnesota.

The economy of the region relies heavily on the pulp and paper industry. Boise Cascade Corporation owns and operates several large mills in Kenora and Fort Frances. Tourism ranks as the area's second most important industry with excellent fishing, many resorts, outfitters, national and provincial parks, and recreational opportunities available. The Namakan chain of lakes has been the focus of tourism development, but has shown no growth or modest decline, in recent years. Other industries of importance include hydroelectric power generation, commercial fishing, agriculture and, to a limited degree, the mining of iron ore.

Important water interests in the watershed include: Boise Cascade Corporation which utilizes a portion of the hydroelectric potential of the region to support its paper production operations; resort owners and outfitters, who rely on stable summer lake levels and good fishing conditions for recreational activities which provide their livelihood; United States National Park Service represented by Voyageurs National Park, which is interested in "improving" levels on the Namakan chain of lakes to enhance fish and wildlife habitats and production within the park; naturalists representing Superior National Forest and Quetico Provincial Park, who maintain large portions of the headwaters area as a natural wilderness area, part of which is designated as the Boundary Waters Canoe Area; domestic and industrial water users as represented by municipalities within the watershed.

In addition, the lower portion of the watershed is the homeland to over 7,500 Ojibway Indians. The Ojibway depend upon the waters of the area for travel, fishing, trapping and, most important, wild rice production. Because of the close relationship of the watershed to the Indian's spiritual and physical lives, the Ojibway are keenly interested in factors affecting their usage of the waters.

4. REGULATION

4.1 Historic Background

(1) Early Years

The history of regulation in the Lake of the Woods watershed dates back to about 1887 when the Canadian government authorized construction of what was known as the Rollerway Dam in the western outlet of Lake of the Woods near Kenora, Ontario, to improve navigation conditions. Between 1893 and 1895 the Keewatin Power Company, under authority of the Ontario government, constructed Norman Dam in the Winnipeg River about one mile (1.6 km) below the Rollerway Dam, which was removed in 1899. In 1906, the Kenora, Ontario, municipal power station was constructed across the eastern outlet of Lake of the Woods at Kenora.

In 1909, the Ontario and Minnesota Paper Company completed construction on the dam spanning the Rainy River between International Falls, Minnesota, and Fort Frances, Ontario. The last structures, of significance to regulation, constructed in the watershed were the Kettle Falls Dams, completed by the Rainy River Improvement Company in 1914.

(2) Lake of the Woods Reference

Norman Dam had a marked effect on Lake of the Woods levels, maintaining them about 3.5 ft. (1.07 m) above natural conditions. As a result of this, there were numerous complaints of high water from south shore settlers in Minnesota. As well, United States Engineers, involved in the Warroad, Minnesota, harbor project, felt that the dams could be operated to maintain more satisfactory (higher) levels during the navigation season. These problems were magnified by the low water conditions of 1910 and 1911 and attempts by certain United States interests to direct some of the water from Lake of the Woods watershed into Lake Superior, via Birch Lake. In an effort to resolve these problems, the Lake of the Woods Reference was transmitted to the International Joint Commission on June 27, 1912, by the governments of Canada and the United States.

The reference sought the answer to questions regarding the most advantageous use of the waters of the Lake of the Woods and sought recommendations on lake regulation. The Commission held public hearings on the matter at International Falls and Warroad in 1914; at International Falls, Warroad, and Kenora in 1915; at International Falls and Winnipeg in 1916; and final arguments the same year in Washington, D.C. Consulting engineers completed field investigations in 1917 and, supplemented by its own studies of the various water interests in the region, the Commission submitted its "Final Report" to the two governments in May, 1917. Briefly, the conclusions and recommendations of the report were as follows:

(a) The ordinary maximum stage on Lake of the Woods should be elevation 1061.25 ft. (323.47 m) m.s.l. with extreme low level at elevation 1056.0 ft. (321.87 m), m.s.l., and extreme high level at elevation 1062.5 ft. (323.85 m) m.s.l.

(b) The ordinary maximum stage may be slightly increased after regulation experience is gained.

(c) The governments should acquire flowage easements to elevation 1064.0 ft. (324.31 m) m.s.l.

(d) It was both advisable and possible to regulate volume, use, and outflow of the water of Lake of the Woods.

(e) The outflow capacity of Lake of the Woods at elevation 1061.0 ft. (323.39 m) m.s.l. should be increased to 47,000 ft^3/s (1330 m^3/s) and Norman Dam should be utilized for regulation purposes.

(f) Advantage should be taken of existing reservoir capacity on Rainy Lake and the lakes immediately above Kettle Falls.

(g) The reservoirs should be enlarged when demands for power warrant.

(h) There should be international control of all dams and works extending across the international boundary, the Canadian Dam at Kettle Falls, and the regulating works and dams at the outlet of Lake of the Woods, when the level rises above elevation 1061.0 ft. (323.39 m) m.s.l. or falls below elevation 1056.0 ft. (321.87 m) m.s.l.

(3) 1925 Convention and Protocol

On February 24, 1925, in Washington, D.C., a Convention and Protocol between governments was signed with ratifications later exchanged on July 17, 1925. The Convention and Protocol, basically, adopted the recommendations of the Lake of the Woods Reference as the basis for regulation of Lake of the Woods. In addition, the Convention provided for the following:

(a) The establishment of the Canadian and International Lake of the Woods Control Boards.

(b) Regulation to provide the highest continuous uniform discharge from the lake between elevations 1056.0 ft. (321.87 m) m.s.l. and 1061.25 ft. (323.47 m) m.s.l.

(c) No waters were to be diverted from Lake of the Woods to any other watershed without approval of governments.

(4) Rainy Lake Reference

At the moment the Convention and Protocol was signed, identical letters of reference from the governments were transmitted to the Commission, submitting questions as to the regulation of the levels of Rainy Lake and other upper boundary waters.

During September, 1925, an initial public hearing to gather information on the matter was held at International Falls, Minnesota. Numerous written protests were recorded from towns, municipal organizations, conservation and other societies, and individuals against any change in levels in the Rainy Lake watershed. Oral statements were made on behalf of state, provincial, and municipal governments as well as various industrial interests on both sides of the boundary.

The scope of the investigation was of such a complex nature that the Final Report of the engineers to the Commission was not submitted until April, 1932. Following public disclosure of this report, the Commission met twice, in Ottawa in October 1932, at the regular meeting of the Commission, and in Washington, D.C., in April 1933, at a special meeting, with representatives of the Receivers of the Minnesota and Ontario Paper Company. Discussions were held regarding the merits of alternatives, proposed by a separate study commissioned by the company, to the recommendations of the Final Report of the engineers.

Final hearings were held in Winnipeg and in Minneapolis in October 1933. Briefs and other statements were filed and oral testimony given on behalf of Canadian and United States interests. The "Final Report" of the International Joint Commission on the Rainy Lake Reference was submitted to governments in May 1934. The conclusions and recommendations reached by the Commission were as follows:

(a) The upper limit of the ordinary range of levels on Rainy and Namakan Lakes should remain, respectively, elevation 1108.61 ft. (337.90 m) m.s.l. and elevation 1120.11 ft. (341.41 m) m.s.l., with the need to exceed these levels at some point in the future, unlikely.

(b) Limited development of boundary waters above Namakan Lake could be warranted in the future, but decisions regarding this development should be left until that time.

(c) No interests, other than the owners and operators, were benefitted by the storage in Rainy and Namakan Lakes, provided by the dams at Fort Frances/International Falls and Kettle Falls. Therefore, no apportionment of cost among the various interests for this storage was required.

(d) It would be wise and in the public interest that the Commission be empowered to determine when emergency conditions exist in the Rainy watershed, whether by reasons of high or low water, and to adopt such measures of control deemed necessary with respect to the existing dams at Kettle Falls and International Falls and any future works in the watershed.

(5) Rainy Lake Convention

The recommendations of the Commission's "Final Report" on the Rainy Lake Reference were accepted as a basis of agreement for a Convention between governments, which came in force, upon exchange of ratifications by governments, in October 1940. The 1940 Convention did not define any specifics for the regulation of the upper boundary waters but clothed the IJC with the power to determine when emergency conditions exist in the Rainy Lake watershed and to adopt control measures as necessary with respect to the existing or any future dams in the watershed, in the event the Commission determines that emergency conditions exist. In 1941 the IJC created the International Rainy Lake Board of Control and directed it to examine and report on the issue of emergency conditions.

(6) 1949 Regulation Order

After detailed study and recommendations by the International Rainy Lake Board of Control and public hearings held in 1941 and 1946, the Commission issued its Order of June 8, 1949, which provided that:

(a) The International Rainy Lake Board of Control would have general supervision over regulation of Rainy and Namakan Lakes at all times.

(b) Emergency conditions existed on Namakan Lake when its level was higher than 1118.61 ft. (340.95 m) m.s.l. or fell below 1108.61 ft. (337.90 m) m.s.l. Emergency conditions existed on Rainy Lake at levels above 1108.11 ft. (337.75 m) m.s.l. or below 1104.61 ft. (336.69 m) m.s.l.

(c) The levels of Rainy and Namakan Lakes would be regulated, to the extent existing facilities permitted, according to rule curves (see Figures 7 and 8) with any wide variations subject to Board and Commission approval.

(d) Whenever the level of Rainy Lake was below its rule curve, an average 6,000 ft^3/s (170 m^3/s) discharge would be in effect except: when the level was below the rule curve on 1 July and average inflow was less than 10,000 ft^3/s (283 m^3/s), the outflow would then be 4,000 ft^3/s (113 m^3/s) until levels returned to the rule curve; or

FIGURE 7

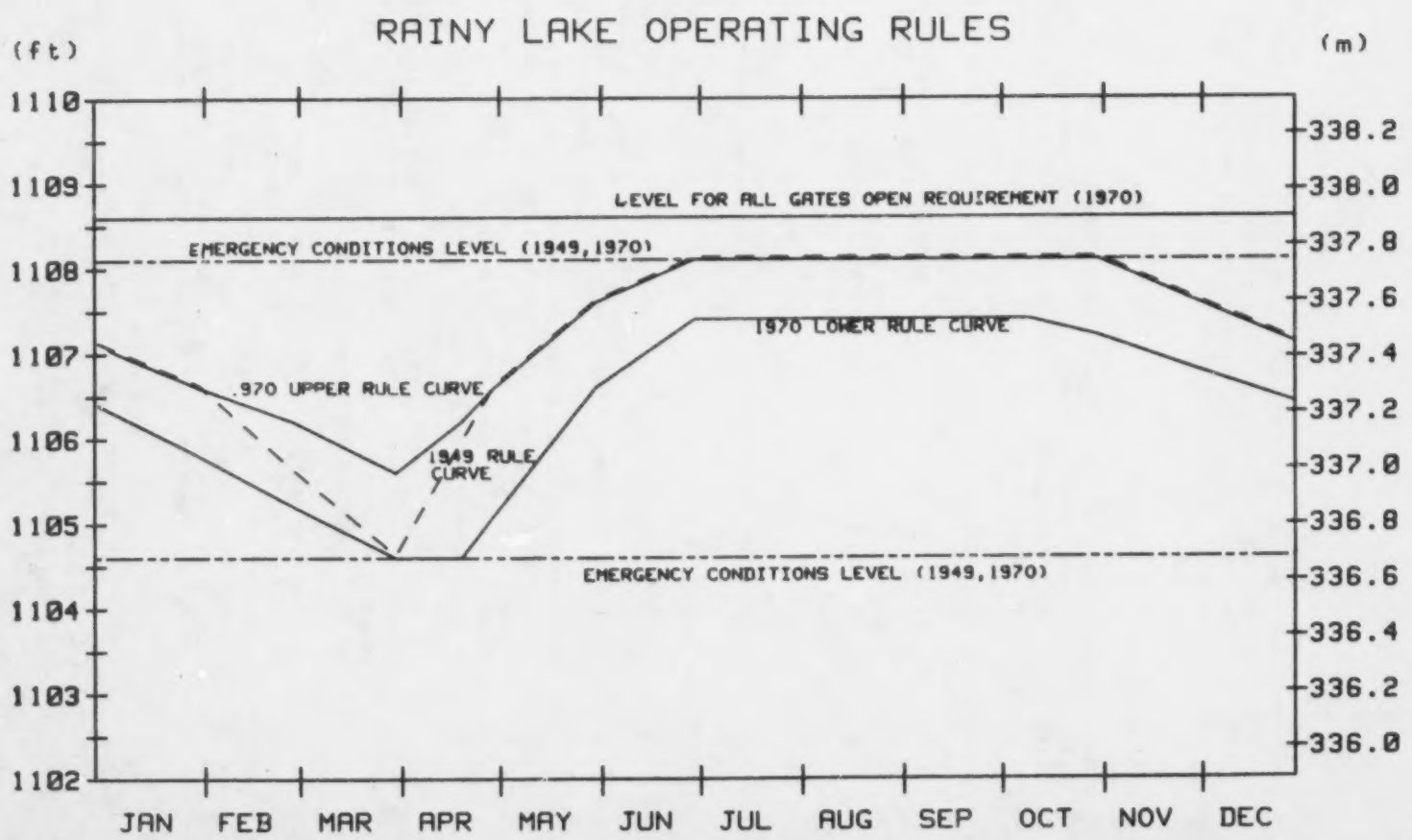
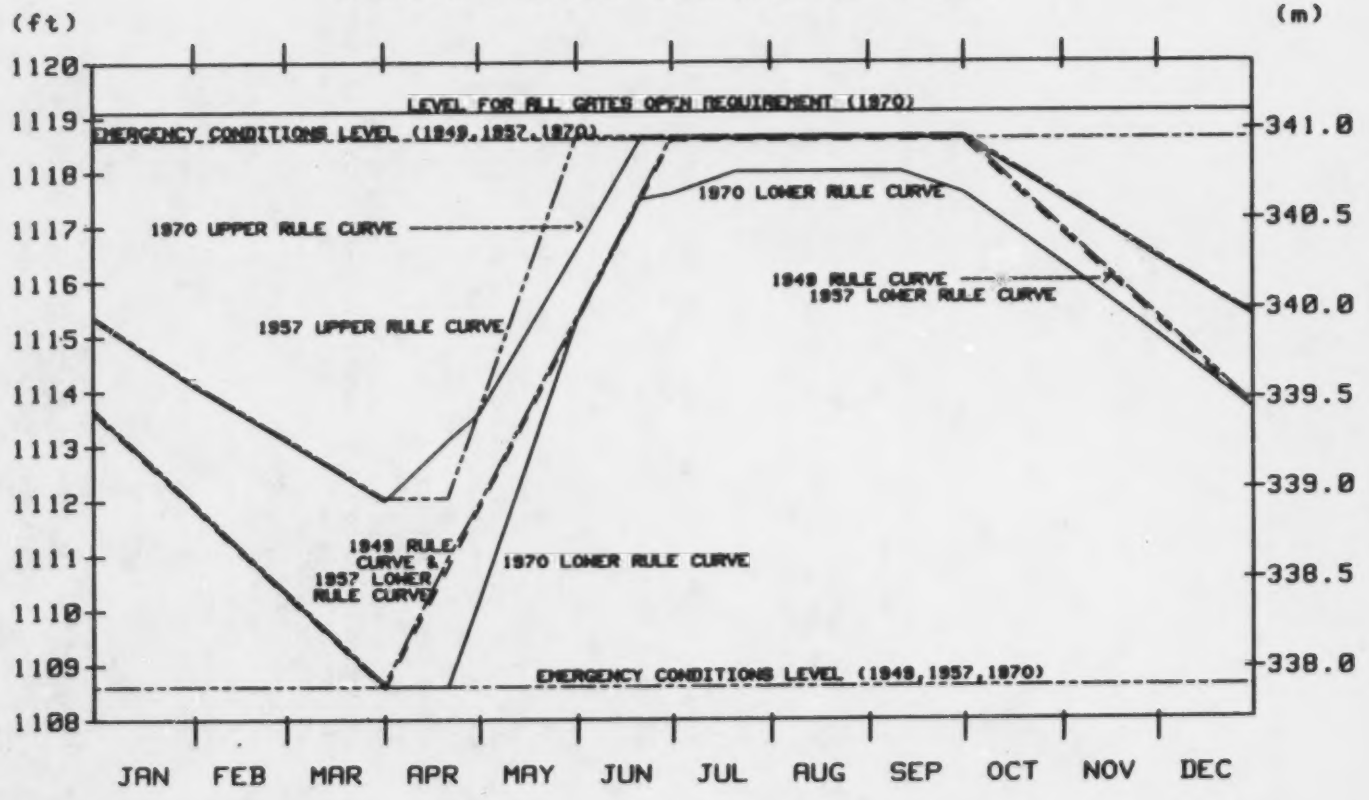

RAINY LAKE OPERATING RULES
(ft)
(m)
1110
1109
1108
1107
1106
1105
1104
1103
1102
338.2
338.0
337.8
337.6
337.4
337.2
337.0
336.8
336.6
336.4
336.2
336.0
LEVEL FOR ALL GATES OPEN REQUIREMENT (1970)
EMERGENCY CONDITIONS LEVEL (1949,1970)
1970 LOWER RULE CURVE
1970 UPPER RULE CURVE
1949 RULE CURVE
EMERGENCY CONDITIONS LEVEL (1949,1970)
JAN
FEB
MAR
APR
MAY
JUN
JUL
AUG
SEP
OCT
NOV
DEC

FIGURE 8

NAMAKAN LAKE OPERATING RULES



when the level was at any time more than 2 ft. (0.6 m) lower than the rule curve and inflow since the first of the month under consideration was less than 10,000 ft^3/s (283 m^3/s), the outflow would then be reduced to 4,000 ft^3/s (113 m^3/s) until "rule" levels were reached and/or inflow rose above 10,000 ft^3/s (283 m^3/s), since the first of the month being considered.

(e) The man-made barrier which obstructed the Bear Portage overflow was not to be altered in any way by anyone without permission of the Commission.

The rule curve approach to the regulation of Rainy and Namakan Lakes, provided by the 1949 Order, seemed a good compromise between the desires of riparian interests for uniform levels year-round and the desires of the power interests for fluctuating levels to obtain outflows when required.

It is noteworthy that the emergency levels defined by the IJC reduced on both lakes the operating ranges approved at the time of dam construction. On Rainy Lake the upper limit was lowered by 0.5 ft. (0.15 m) and the lower limit was raised by 3 ft. (0.91 m). On Namakan Lake the upper limit was lowered by 1.5 ft. (0.46 m).

Also, while the 1949 Regulation Order was based for the most part on the IRLBC Report to the IJC of March 1948, there was one major deviation from the Board's report. This dealt with the definition of "emergency conditions". In the 1940 Convention, the IJC was "...empowered to adopt such measures of control as to it may seem proper... in the event the Commission shall determine that such emergency conditions exist." The Board proposed that emergency conditions be defined "whenever the relation between inflow and outflow is such that immediate action must be taken to increase (or decrease) the rate of outflow in order to prevent the water level of the reservoir from rising above (or falling below)..." specified elevations. According to the wording of the Treaty, this definition would have given the IJC explicit power throughout the entire operating range of Rainy and Namakan Lakes, depending on inflows. However, the IJC took a different approach. It stated that, in order to prevent the occurrence of emergency conditions, it is necessary to anticipate high and low inflows and to regulate outflows so as to preclude the occurrence of emergency conditions. The IJC then defined the emergency conditions in terms of absolute levels as given in (b) above. Consequently the Commission interpreted that it was empowered to act not only "in the event" of emergency conditions but also "to preclude the occurrence" of such conditions.

(7) 1957 Supplementary Order

Excessive spring runoff during the years 1950 and 1954 caused both Rainy and Namakan Lakes to exceed their respective summer rule curve

elevations by 1.4 feet (.43 m) to 4.9 feet (1.5 m). Numerous complaints, primarily from recreational interests in the Namakan Chain of lakes area, were lodged with the Commission regarding the adverse impacts of the high water levels. The International Rainy Lake Board of Control held a public meeting at International Falls, Minnesota, in April 1955 during which a number of points of misunderstanding regarding the Board's involvement in the regulation process were clarified.

As a result of the complaints over the high water levels in 1950 and 1954, the Commission, in a directive issued in April 1956, requested the Board to prepare a report covering the possibilities of formulating and putting into effect a revised method of regulation for Rainy Lake and the Namakan chain of lakes. The Board submitted its report to the Commission in July 1956. The findings of the report responded to four questions set forth in the April 1956 directive and were essentially as follows:

(a) The Commission's Order of June 8, 1949, was generally satisfactory.

(b) The Terms of the Order were essentially met, except for the extreme high water years of 1950 and 1954.

(c) The Board should be authorized to vary from the rule curve elevations at its discretion.

(d) No change was suggested in the Rainy Lake rule curve. However, a maximum rule curve to be used in conjunction with the existing rule curve was suggested for Namakan Lake as beneficial to the various interests by providing greater flexibility of operation. Maximum allowable elevations on the lake would be increased from 1 October to 1 June with the lake being operated between the two rule curves.

(e) No change was required in the existing control works. However, it should be mandatory for the owners to maintain the existing works in good operating condition.

The recommendations of the Board were considered by the Commission, while public hearings on the matter were held in August, 1956, at International Falls, Minnesota. They were adopted when the Commission issued a Supplementary Order dated October 1, 1957, amending the 1949 Order. The Supplementary Order was to be in force until September 30, 1962. The Commission, after holding public hearings, extended the termination date of the 1957 amendment on two occasions, October 2, 1962, and April 5, 1967, for additional five year periods. The last extension was to have expired on October 3, 1972.

(8) 1970 Supplementary Order

Because of high and low water conditions on Rainy and the Namakan chain of lakes from 1957 through 1968, the rule elevations were violated on many occasions, culminating in the extreme high levels during July 1968 of 1110.16 feet (338.38 m) m.s.l. on Rainy and 1121.09 feet (341.71 m) m.s.l. on Namakan Lake. The levels of 1968 resulted in reports of damage to tourist resorts on Crane and Kabetogama Lakes, part of the Namakan chain of lakes.

In August 1968, the Commission directed the International Rainy Lake Board of Control to consider and report to the Commission upon the advisability of an early examination of further regulatory measures in the Rainy Lake watershed. Experience had demonstrated the difficulties of trying to regulate Rainy and Namakan Lakes to precise elevations on certain dates, under all conditions of supply and also the desirability of further qualifications of the Commission's determination of "emergency conditions" within the meaning of the Rainy Lake Convention.

The Board presented its proposals before the Commission in October, 1968, at which time the proposals were approved and the Board was requested to carry out a review of regulation on the lakes. The Board's report to the Commission, dated March 1969, was made public at once to all interested persons. A public hearing on the matter was held at International Falls, Minnesota, in June 1969.

At the hearing testimony was made on behalf of the Province of Ontario and the State of Minnesota, the Manitoba Hydro-Electric Board, the City of Winnipeg Hydro-Electric System, the Hydro-Electric Power Commission of Ontario, the Ontario-Minnesota Pulp and Paper Company Limited, the operators of tourist, fishing and hunting camps, resorts and various individuals.

The International Rainy River Pollution Advisory Board reported to the Commission in April 1970 that when the outflow from Rainy Lake is low, unsightly fibrous sludge deposits on the bed of Rainy River are exposed; that this condition becomes increasingly offensive when the outflow is less than 4,000 ft^3/s (113 m^3); and that at a streamflow of 3,300 ft^3/s (93.4 m^3) dissolved oxygen in Rainy River is below the objective of 5 milligrams per litre.

On July 29, 1970, the Commission issued a Supplementary Order amending the previous Orders. The key provisions of the 1970 Order were as follows:

(a) Emergency conditions exist in and along the shores of Rainy Lake and the Namakan chain of lakes when the level of Rainy Lake is above elevation 1108.1 ft. (337.75 m) and the level of Namakan Lake is above elevation 1118.6 ft.

(340.95 m) m.s.l., excluding wind and current effects, and the inflow is in excess of the outflow capacity of the existing structures at International Falls and Kettle Falls.

(b) Emergency conditions also exist when the levels of Rainy and Namakan Lakes are lower than elevations 1104.6 feet (336.68 m) m.s.l. and 1108.6 feet (337.90 m) m.s.l., respectively, and outflows are reduced to the minimum values prescribed by the Commission.

(c) Insofar as possible, high and low inflows to Rainy and Namakan Lakes should be anticipated so that the discharge capacities of the dams at International Falls and Kettle Falls are used to best advantage to prevent the occurrence of emergency conditions.

(d) The companies, their successors or assigns should operate the discharge facilities at International Falls and Kettle Falls, as authorized by the International Rainy Lake Board of Control, in such a manner that the levels of Rainy and Namakan Lakes would be between their maximum and minimum rule band values on certain dates as shown in Figures 7 and 8.

(e) When the level of Rainy Lake is above elevation 1108.6 ft. (337.90 m) m.s.l., the dam at International Falls is to be discharging at full capacity. Similarly, when the level of Namakan Lake is above 1119.1 ft (341.10 m) m.s.l., the Kettle Falls Dams are to be discharging at full capacity.

(f) When the level of Rainy Lake falls below the specified minimum rule curve elevation, the outflow from the International Falls dam is to be reduced to 4,000 ft^3/s (113 m^3/s) between sunrise and sunset in the months of May to October and to 3,300 ft^3/s (93.4 m^3/s) at all other times.

The outflow at Kettle Falls is to be reduced to 1,000 ft^3/s (28.3 m^3/s) whenever its level is below the minimum rule curve.

(g) The International Rainy Lake Board of Control, upon obtaining Commission approval, was empowered to authorize Rainy and/or Namakan Lake levels to be temporarily raised above or lowered below their respective rule bands.

(h) All obligations of the June 8, 1949 Order, as amended by the October 1, 1957 Supplementary Order and by the July 29, 1970 Supplementary Order, upon the Companies, their successors or assigns, applied jointly and severally to

Boise Cascade Corporation, Minnesota and Ontario Paper Company (merged into Boise-Cascade Corporation in 1965), Rainy River Improvement Company and the Ontario-Minnesota Pulp and Paper Company Limited.

(i) The man-made barrier which existed for many years at the Bear Portage natural overflow outlet, and which had deteriorated by natural process, was not to be modified in any way by anyone without permission of the Commission.

(9) Supplementary Orders since 1970

To date six Supplementary Orders have been issued by the Commission, primarily to authorize minimum flow deviations during periods of low levels on Rainy and Namakan Lakes. These Supplementary Orders, which have all expired, are dated October 20 and 28, 1976, November 19, 1976, May 4, 1977, June 14, 1977, and May 7, 1980. Currently, only the Commission's Order of June 8, 1949, as amended by the Supplementary Orders of October 1, 1957 and July 29, 1970, remains in effect as the basis for regulation of Rainy Lake and Namakan Lake.

The regulation criteria currently in place for Lake of the Woods, Rainy and Namakan Lakes are summarized in Figure 9.

4.2 Constraints to Regulation

Regulation operations in Rainy-Namakan and Lake of the Woods basins are constrained by imperfect foreknowledge and physical or hydrologic limitations. These are discussed below.

(1) Imperfect Foreknowledge

In order to regulate these lakes within their prescribed limits, it is necessary to anticipate future inflows. If it were possible to have perfect foreknowledge of inflows, regulation would be a simple task. However, this is not the case. Because of the size of these lakes, the amount of precipitation that occurs over a period of hours to a few days is not normally of concern. It is true that sustained heavy rain for several days can have a temporary effect on lake levels, especially with Rainy and Namakan Lakes. However, it is generally the average amount of precipitation that persists over several weeks to over a season that will have an impact on levels. Unfortunately, the current state of precipitation forecasts is such that quantity estimates for even a few days are unreliable and no useful longer-term forecasts are available. Further, even if precipitation is known, the amount lost to evapotranspiration, infiltration and other factors is highly variable. Consequently it is impossible to have full knowledge of inflows to the system.

FIGURE 9

Regulation Criteria (Rules)

Lake of the Woods

- normal operating range: 1056 ft. (321.87 m) ≤WL≤1061.25 ft. (323.47 m)
- the lake as a multipurpose reservoir is to be operated within the normal operating range to achieve the highest continuous uniform discharge subject to the requirements of various interests
- when WL ≥ 1061 ft. (323.39 m) the lake is to be regulated to ensure the WL remains less than 1062.5 ft. (323.85 m)
- flood easements exist in the United States up to 1064 ft. (324.31 m)

Rainy Lake

- emergency conditions exist when
  - WL > 1108.1 ft. (337.75 m) and inflow > dam outflow capacity
  - WL < 1104.6 ft. (336.68 m) and outflow = dam minimum discharge
- the WL is to be kept within the rule curve band (see Figure 7) insofar as possible
- all dam gates to be opened fully when WL > 1108.6 ft. (337.90 m)
- when WL < lower rule curve, outflow = 4000 ft^3/s (113 m^3/s) between sunrise and sunset in May to October inclusive and 3300 ft^3/s (93.4 m^3/s) at all other times

Namakan Lake

- emergency conditions exist when
  - WL > 1118.6 ft. (340.95 m) and inflow > dams outflow capacity
  - WL < 1108.6 ft. (337.90 m) and outflow = 1000 ft^3/s (28.3 m^3/s)
- the WL is to be kept within the rule curve band (see Figure 8) insofar as possible
- all dam gates and fishways to be opened fully when WL > 1119.1 ft. (341.10 m)
- when WL < lower rule curve, dam outflow = 1000 ft^3/s (28.3 m^3/s)

NOTE: WL = Water level

It is often felt that forecasts should be possible at least at some times of the year. For example, it should be possible to use winter snowpack to predict spring runoff. However, as shown on the left side of Figure 10, snowpack in the Rainy River basin on average contributes only about one-third of the water available for runoff - spring rains are a more significant factor. This is also illustrated by the top two correlation graphs on the right side of Figure 10. Further, as shown by the bottom graph, even when both inputs are known, a wide variation in runoff is possible. This may be due to:

- inaccurate estimates of mean areal snowpack and rainfall due to extrapolation from a limited number of point measurements;

- temperature, solar radiation, wind, ground frost, antecedent basin storage and other factors affecting melt and runoff rates.

Attempts are made to take advantage of basin streamflow travel times to predict inflows at downstream sites. However, increased forecast time (travel time) is gained at the cost of reduced contributing drainage area. For example, Lac La Croix outflows may take one week or more to reach Rainy Lake but they contribute only 39 percent of average Rainy Lake inflows. Further, travel times are highly variable in the headwaters area due to the storage effects of innumerable lakes.

Today it is possible to have a much better picture of current conditions throughout the basin than was possible in the past, due to the number of stations providing precipitation and streamflow data on a real-time basis. It is doubtful that major inputs to the system would go completely undetected as happened in the past. However, spatial coverage is still limited, inhibiting the estimation of areal extent and magnitude of events. Also, due to access problems, gauge and telemetry malfunctions may result in missing data for extended periods.

All of the aforementioned factors combine to create an imperfect foreknowledge of future inflows on which to base regulation decisions. Because of this imperfect foreknowledge, release decisions must of necessity consider the risks of not filling or overfilling the lakes.

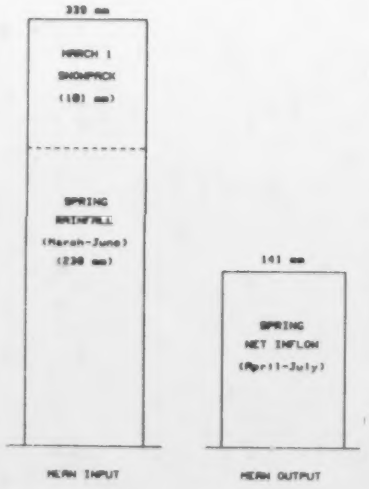
(2) Physical and Hydrologic Limitations

In any system the ability to regulate levels is a function of the variability and magnitude of the inflows and the physical characteristics of the system. With Rainy and Namakan Lakes and Lake of the Woods, the ability to not exceed upper level limits is constrained by the outflow capacity of the structures and the machinery available to open sluiceways. The ability to maintain lower level limits is constrained by the net available inflows, the

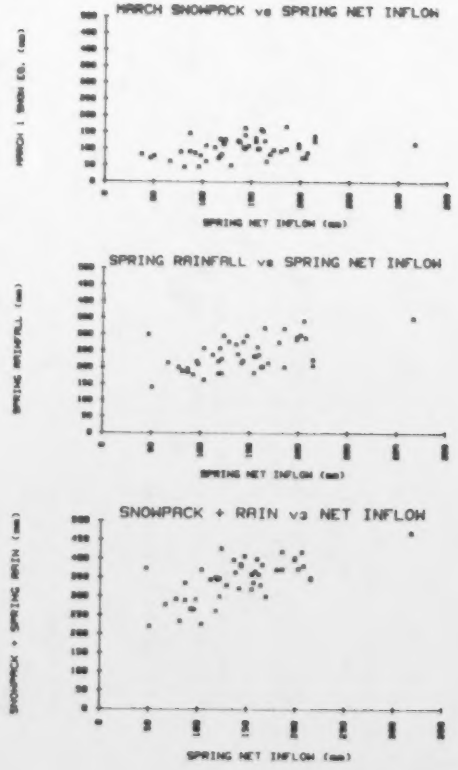
FIGURE 10

MEAN SPRING BASIN INPUTS
COMPARED TO
MEAN SPRING NET INFLOW

Rainy - Namakan Basin



RAINY LAKE BASIN

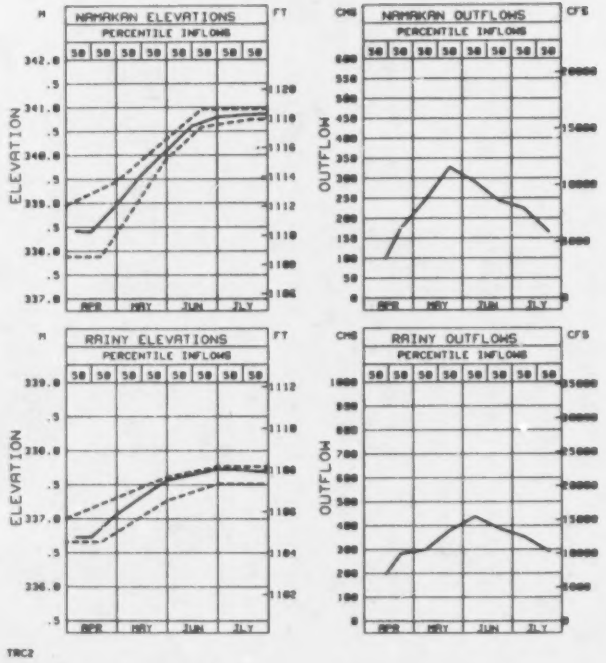

MARCH SNOWPACK vs SPRING NET INFLOW
MARCH 1 SNOW EQ. (mm)
SPRING NET INFLOW (mm)
SPRING RAINFALL vs SPRING NET INFLOW
SPRING RAINFALL (mm)
SPRING NET INFLOW (mm)
SNOWPACK + RAIN vs NET INFLOW
SNOWPACK + SPRING RAIN (mm)
SPRING NET INFLOW (mm)

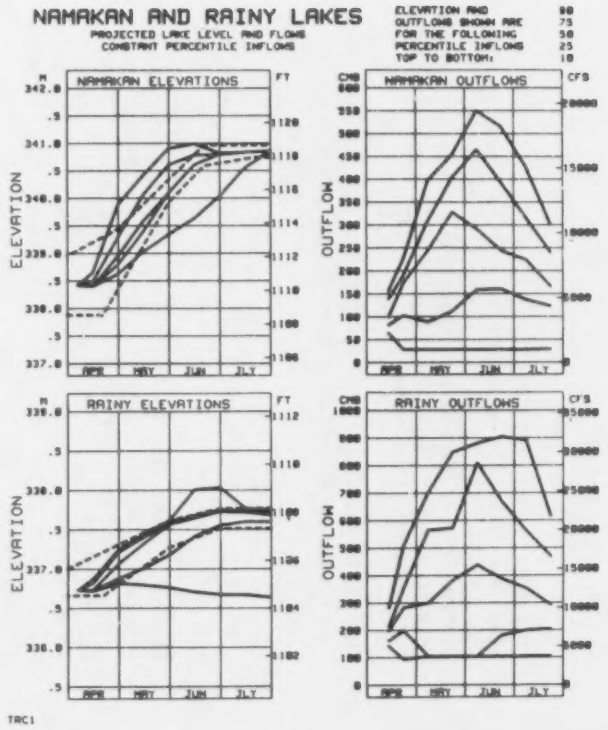
machinery available to close sluiceways, structural leakages and the Gold and Bear Portage uncontrolled overflows.

The benefits of any increase in outflow capacity from a reservoir must be carefully weighed against the disbenefit of higher inflows to downstream sites. Nevertheless, it could be argued that the outflow capacity of the dams on Namakan Lake and Lake of the Woods is inadequate in that inflows which exceed outflow capacity occur at some point in most years. This is also true to a lesser degree for the Rainy Lake dam. The situation is most severe in Namakan Lake. The situation occurs more frequently during spring freshet but also occurs during prolonged periods of summer or fall rainfall. During these periods lake levels are out of control. If heavy runoff is anticipated in the spring, the only course of action available is to draw the lake level lower prior to the event commencing. This may require the spilling of water and the loss of valuable storage. In spite of this, inflows may be such that specified limits are exceeded. However, if inflows are less than anticipated, it may then be difficult or impossible to reach adequate summer levels. As to the summer and fall, when lake levels are normally near their upper limit, the occurrence of inflows greater than outflow capacity may well result in storage limits being exceeded, with no possible recourse. Figure 11 shows the effect of various inflows on the levels of Rainy and Namakan Lakes which existed in April of this year. As shown by the graphs on the left side, it is possible to maintain both lakes within their operating bands with a normal or 50 percentile inflow. However, as shown by the graphs on the right side, inflows of 75 percentile or greater would cause Namakan Lake to exceed its band, while Rainy Lake exceeds its band with inflows greater than 90 percentile.

The same graphs also give examples of inflows being inadequate to maintain minimum level requirements. With 10 percentile inflows, it is impossible for Rainy and Namakan Lakes to be maintained in their bands even with the outflows reduced to the minimum specified. If the end of winter levels had been lower, the results would be even more severe. Inadequate inflows may also occur in the summer and fall, as they did this year, when inflows less than the total of evaporation losses and the minimum outflow caused the level to decline.

The machinery available to open/close sluiceways was noted as a constraint to observing both upper and lower limits. The Lake of the Woods and Namakan Lake dams are stop-log structures. As described in Section 3.2, the equipment is primative at all sites, but is the worst at the Canadian Dam on Namakan Lake. Stop-log movements are very cumbersome and time consuming and may be dangerous or impossible under high flow or winter conditions. Further, work crews must be transported from Fort Frances by boat or plane to the Namakan Lake dams. Consequently it is not possible to respond immediately to


NAMAKAN AND RAINY LAKES
PROJECTED LEVELS AND OUTFLOWS - FORECAST PERCENTILE INFLOWS
NAMAKAN ELEVATIONS
NAMAKAN OUTFLOWS
RAINY ELEVATIONS
RAINY OUTFLOWS
PERCENTILE INFLOWS
ELEVATION
OUTFLOW
APR
MAY
JUN
JLY
TRC2


NAMAKAN AND RAINY LAKES
PROJECTED LAKE LEVEL AND FLOWS
CONSTANT PERCENTILE INFLOWS
ELEVATION AND OUTFLOWS SHOWN ARE FOR THE FOLLOWING PERCENTILE INFLOWS TOP TO BOTTOM:
90
75
50
25
10
NAMAKAN ELEVATIONS
NAMAKAN OUTFLOWS
RAINY ELEVATIONS
RAINY OUTFLOWS
ELEVATION
OUTFLOW
APR
MAY
JUN
JLY
TRC1

changing inflow conditions and considerable delay may occur. Also, stop-log control mechanisms are conducive to errors in flow changes, due to the potential for confusion over the number of stop-logs to remove from a particular sluiceway. This is particularly true when varying numbers of stop-logs are being removed from or installed in a large number of sluiceways.

In addition, the stop-logs at the above structures, and also the gates at the Rainy Lake dam, do not seal tightly. This results in uncontrolled flow leakage which, ordinarily, is a small percentage of the total outflow and causes no problem for regulation. However, during periods of low inflows, these uncontrolled leakages can represent a significant loss. Leakage has probably been the worst at the Namakan Lake dams, followed by the Lake of the Woods dam.

Finally, the natural overflows at Gold Portage and Bear Portage represent an uncontrolled loss from Namakan Lake into Rainy Lake. These overflows provide additional outflow capacity from Namakan Lake during high water periods, helping to reduce peak levels on Namakan Lake. Problems arise during periods of low inflows. At these times the overflows aggravate the problem of maintaining minimum levels on the lake by providing undesired releases.

4.3 Current Regulation

This section will consider the effectiveness of current regulation practices in achieving the level criteria specified for each lake. Lake of the Woods will be considered separately from Rainy and Namakan Lakes. For reference, the regulation criteria were summarized previously in Figure 9.

(1) Lake of the Woods

The ILWCB only becomes involved in the regulation of Lake of the Woods when levels exceed elevation 1061.0 ft. (323.39 m) or drop below elevation 1056 ft. (321.87 m). The normal operating range is 1056.0-1061.25 ft. (321.87-323.47 m) while elevation 1062.5 ft. (323.85 m) is not to be exceeded if at all possible.

A review has been made of the frequency with which these levels have been encountered. The period of record considered was 1927 through 1983 inclusive, 1927 being the first year that the lake's enlarged outflow capacity as called for in the 1925 Convention and Protocol was available. Considering mean daily levels, the following level frequencies have occurred in this 57 year period:

	Percent of Time
Below 1056.0 ft. (321.87 m)	1.36
Above 1061.0 ft. (323.39 m)	8.79
Above 1061.25 ft. (323.47 m)	4.32
Above 1062.5 ft. (323.85 m)	0.85

Levels have only fallen below elevation 1056.0 ft. (321.87 m) in March-May of 1930 and from September 1930 to April of 1931. Inflows during this period were the lowest on record (since 1893). Levels have risen above the operating band in a total of 18 out of the 57 years, for deviations ranging from 3 days to 178 days, the latter duration resulting from the flood of 1950. However, levels rose above the flood level of 1062.5 ft. (323.85 m) in only 2 years, 1927 and 1950, for periods of 68 and 109 days respectively. These years represent respectively the third largest and the largest floods on record.

Based on the above frequencies, there appears to be no cause for concern regarding Lake of the Woods regulation practices. Based on the first two frequencies in the above table, the mandate of the ILWCB has been exercised about 10 percent of time, the last occasion being in 1974. Figure 12 shows levels and flows to date in 1984.

(2) Rainy-Namakan Lakes

The current set of operating criteria for these lakes was issued in July 1970. Consequently only regulation under these criteria and since this time is considered herein. However, a full set of graphs of Rainy and Namakan Lakes levels for the period 1912-1983 is included in the Appendix. These graphs clearly show how the range of storage has been diminished and how levels have become much more regular and cyclical on these lakes under the IJC Orders. The graph of each year shows the IJC rule curve or band that was in place at that time, if any. In addition, level plots for Lac la Croix are provided. As this lake is naturally regulated, its level illustrates the magnitude and timing of inflows to the basin above Namakan Lake.

Level criteria on Rainy and Namakan Lakes are much more tightly defined than on Lake of the Woods. In addition, the variability of inflows relative to storage and outflow capacity is greater. Consequently deviations from the specified bands are more frequent. Figure 13 summarizes the frequency of deviations of Rainy Lake levels from its specified band for the 13-year period from 1971 to 1983 inclusive. The frequency of levels in excess of the specified flood level are also indicated. Figure 14 is similar to Figure 13 except that it summarizes the frequency of deviations greater than 2 in. (5 cm) from the specified operating band. Figures 15 and 16 provide similar summaries for Namakan Lake.

The frequencies of deviations shown in these figures appear high. However, a significant number of the deviations are relatively small deviations. Considering only deviations greater than 2 in. (5 cm) reduces the total percent of deviation time to about 20 percent from 31 percent in the case of Rainy Lake, and from about 25 percent to 17 percent for Namakan Lake. Also, the percent of time above the flood level, 1.4 percent for Rainy Lake and 0.6 percent for

FIGURE 12

LAKE OF THE WOODS
LEVELS & FLOWS
1984

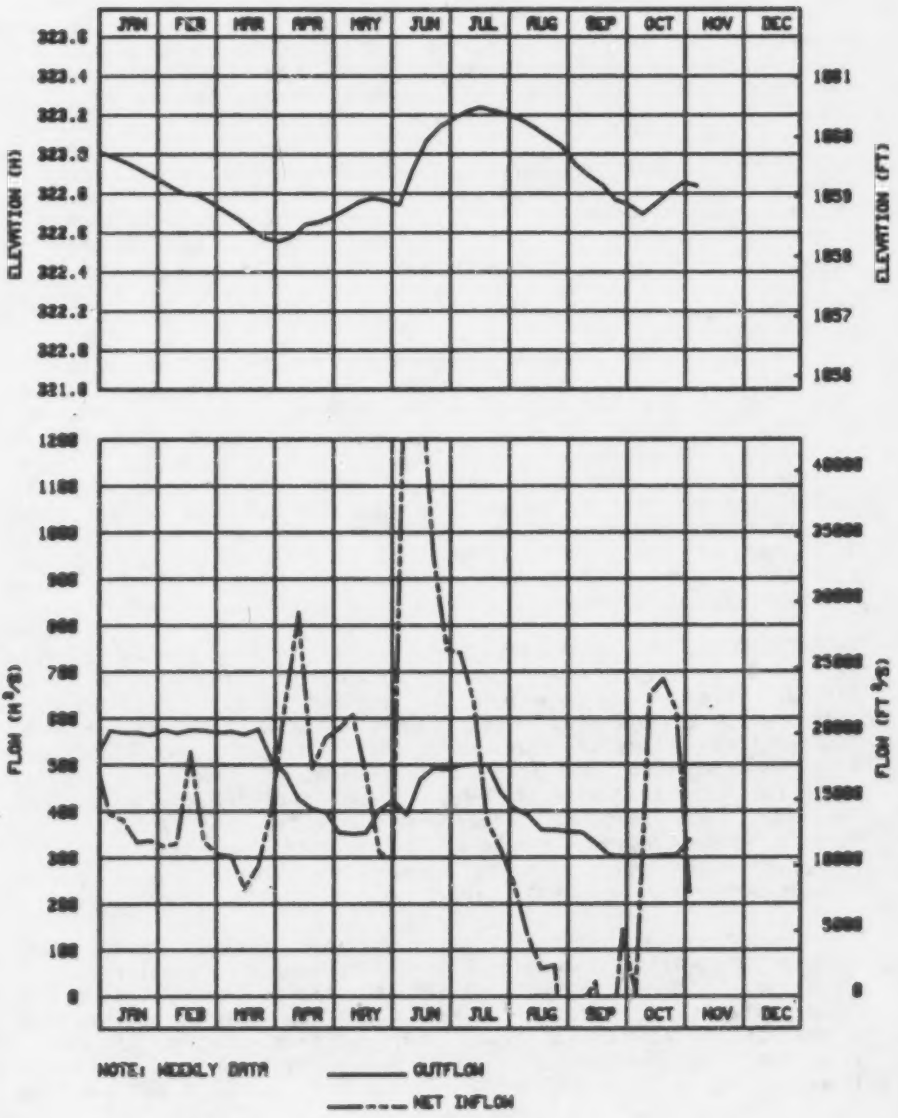


FIGURE 13

RAINY LAKE

FREQUENCY OF DEVIATIONS FROM BAND

ABOVE BAND

NUMBER OF DAYS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	NUMBER OF MNTHS	% OF TIME
1971	0	0	0	0	0	0	0	0	0	6	30	23	3	16.2%
1972	0	0	0	0	0	0	12	1	0	0	0	0	2	3.6%
1973	0	0	0	0	0	0	0	0	0	0	2	0	1	0.6%
1974	0	0	0	0	21	30	15	0	0	0	2	0	4	18.6%
1975	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1976	0	0	0	7	13	0	0	0	0	0	0	0	2	5.5%
1977	0	0	0	0	0	0	0	0	14	31	19	0	3	17.5%
1978	0	0	0	0	1	28	0	0	0	0	0	0	2	8.0%
1979	0	0	0	5	31	15	0	0	0	0	0	26	4	21.1%
1980	18	0	0	0	0	0	0	0	0	0	0	0	1	4.9%
1981	0	0	0	0	23	4	0	0	0	0	0	0	2	7.4%
1982	0	0	0	0	13	17	7	0	0	3	0	0	4	11.0%
1983	0	0	0	0	0	0	16	4	0	0	7	12	4	10.7%
# OF YRS.	1	0	0	2	6	5	4	2	1	3	5	3		
% OF TIME (DAYS)	4.5%	0.0%	0.0%	3.1%	25.3%	24.1%	12.4%	1.2%	3.6%	9.9%	15.4%	15.1%		9.6%

BELOW BAND

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	NUMBER OF MNTHS	% OF TIME
1971	0	0	0	0	0	0	0	4	23	0	0	0	2	7.4%
1972	0	0	6	29	0	0	0	0	10	8	0	0	4	14.5%
1973	0	0	0	0	6	30	11	0	0	0	0	0	3	12.9%
1974	0	0	0	2	0	0	5	12	0	0	0	0	3	5.2%
1975	0	0	0	8	0	0	0	15	30	22	0	0	4	20.6%
1976	0	0	0	0	0	0	0	17	30	31	30	31	5	38.0%
1977	31	28	21	0	31	30	31	31	10	0	0	0	8	58.4%
1978	0	0	13	8	0	0	0	0	0	13	0	0	3	9.3%
1979	0	0	0	0	0	0	0	20	30	31	3	0	4	23.0%
1980	0	0	0	0	26	30	31	31	30	31	5	0	7	50.3%
1981	0	0	0	0	0	0	0	3	30	27	0	0	3	16.4%
1982	0	0	10	8	0	0	0	0	18	0	0	0	3	9.9%
1983	0	0	0	0	25	16	0	0	0	0	0	0	2	11.2%
# OF YRS.	1	1	4	5	4	4	4	8	9	7	3	1		
% OF TIME (DAYS)	7.7%	7.6%	12.4%	14.1%	21.8%	27.2%	19.4%	33.0%	54.1%	40.5%	9.7%	7.7%		21.3%

OUTSIDE BAND

# OF YRS.	2	1	4	7	10	9	7	10	9	10	8	4		
% OF TIME (DAYS)	12.2%	7.6%	12.4%	17.2%	47.2%	51.3%	31.8%	34.2%	57.7%	50.4%	25.1%	22.8%		30.9%

ABOVE FLOOD LEVEL

1971	0	0	0	0	0	0	0	0	0	0	0	0	1	2.2%
1974	0	0	0	0	0	25	11	0	0	0	0	0	2	9.9%
1977	0	0	0	0	0	0	0	0	3	19	0	0	2	6.0%
# OF YRS.	0	0	0	0	0	1	1	0	1	1	1	0		
% OF TIME (DAYS)	0.0%	0.0%	0.0%	0.0%	0.0%	6.4%	2.7%	0.0%	0.8%	4.7%	2.1%	0.0%		1.4%

FIGURE 14

RAINY LAKE

FREQUENCY OF DEVIATIONS GREATER THAN 5 CM FROM BAND

ABOVE BAND

	NUMBER OF DAYS													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	NUMBER OF MNTHS	% OF TIME
1971	0	0	0	0	0	0	0	0	0	3	30	19	3	14.3%
1972	0	0	0	0	0	0	8	0	0	0	0	0	1	2.2%
1973	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1974	0	0	0	0	10	30	14	0	0	0	0	0	3	17.0%
1975	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1976	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1977	0	0	0	0	0	0	0	0	12	30	0	0	2	11.5%
1978	0	0	0	0	0	17	0	0	0	0	0	0	1	4.7%
1979	0	0	0	3	31	9	0	0	0	0	0	0	3	11.8%
1980	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1981	0	0	0	0	9	0	0	0	0	0	0	0	1	2.5%
1982	0	0	0	0	11	14	0	0	0	0	0	0	2	6.9%
1983	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
# OF YRS.	0	0	0	1	4	4	2	0	1	2	1	1		
% OF TIME (DAYS)	0.0%	0.0%	0.0%	0.8%	17.1%	18.0%	5.5%	0.0%	3.1%	8.2%	7.7%	4.7%		5.4%

BELOW BAND

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	NUMBER OF MNTHS	% OF TIME
1971	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1972	0	0	0	25	0	0	0	0	0	0	0	0	1	6.8%
1973	0	0	0	0	2	30	6	0	0	0	0	0	3	10.4%
1974	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1975	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1976	0	0	0	0	0	0	0	0	18	0	0	0	1	4.9%
1977	31	28	11	0	28	30	31	31	8	0	0	0	5	34.4%
1978	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1979	0	0	0	0	0	0	0	0	10	31	0	0	2	11.2%
1980	0	0	0	0	23	30	31	31	30	31	3	0	7	48.9%
1981	0	0	0	0	0	0	0	0	20	0	0	0	2	7.7%
1982	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1983	0	0	0	0	21	14	0	0	0	0	0	0	2	9.6%
# OF YRS.	1	1	1	1	4	4	3	3	6	4	2	1		
% OF TIME (DAYS)	7.7%	7.7%	2.7%	6.4%	18.4%	26.7%	16.9%	16.4%	29.7%	25.1%	8.5%	7.7%		14.5%

OUTSIDE BAND

# OF YRS.	1	1	1	2	8	8	5	3	7	6	3	2		
% OF TIME (DAYS)	7.7%	7.7%	2.7%	7.2%	35.5%	44.6%	22.3%	16.4%	32.8%	33.3%	16.1%	12.4%		19.9%

FIGURE 15

MANAKAN LAKE

FREQUENCY OF DEVIATIONS FROM BAND

ABOVE BAND

NUMBER OF DAYS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	NUMBER OF MNTHS	% OF TIME
1971	0	0	0	6	31	8	0	0	0	5	30	23	6	28.2%
1972	0	0	0	0	0	0	7	1	0	0	0	0	2	2.2%
1973	0	0	0	0	0	0	0	0	0	10	0	0	1	2.7%
1974	0	0	0	0	18	21	0	10	2	0	0	0	4	14.0%
1975	0	0	0	0	29	1	0	1	0	0	0	0	3	9.0%
1976	0	0	0	13	23	0	0	0	0	0	0	0	2	9.8%
1977	0	0	0	0	0	0	0	0	27	31	30	4	4	25.2%
1978	0	0	0	0	10	8	0	0	0	0	0	0	2	4.9%
1979	0	0	0	6	31	13	0	0	0	0	0	0	3	13.7%
1980	17	5	0	0	0	0	0	0	0	0	0	0	2	6.0%
1981	0	0	0	8	31	11	0	0	0	0	0	0	3	13.7%
1982	0	0	0	0	25	10	0	0	0	6	0	0	3	11.2%
1983	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
# OF YRS.	1	1	0	4	8	7	1	3	2	4	2	2		
% OF TIME (DAYS)	4.2%	1.4%	0.0%	8.5%	49.1%	18.5%	1.7%	3.5%	7.4%	12.9%	15.4%	6.7%		10.8%

BELOW BAND

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	NUMBER OF MNTHS	% OF TIME
1971	15	26	0	0	0	0	1	0	7	0	0	0	4	13.4%
1972	2	21	0	0	0	0	0	0	6	7	0	0	4	9.8%
1973	0	0	0	0	0	0	12	0	0	0	0	0	1	3.3%
1974	24	9	0	0	0	0	0	2	0	0	0	0	3	9.6%
1975	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1976	0	0	0	0	0	0	0	9	30	31	30	31	5	35.8%
1977	31	19	0	0	28	30	31	16	0	0	0	0	6	42.5%
1978	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1979	0	0	0	0	0	0	0	0	21	19	0	0	2	11.0%
1980	0	0	0	0	2	30	31	31	27	0	1	0	6	33.3%
1981	0	0	0	0	0	0	0	17	30	13	0	0	3	16.4%
1982	0	0	0	0	0	9	0	0	0	0	0	0	1	2.5%
1983	0	0	0	0	1	24	0	0	0	0	0	0	2	6.9%
# OF YRS.	4	4	0	0	3	4	4	5	6	4	2	1		
% OF TIME (DAYS)	17.9%	20.4%	0.0%	0.0%	7.7%	23.8%	18.6%	18.6%	31.0%	17.4%	8.0%	7.7%		14.2%

OUTSIDE BAND

# OF YRS.	5	5	0	4	11	10	5	7	8	8	4	3		
% OF TIME (DAYS)	22.1%	21.8%	0.0%	8.5%	56.8%	42.3%	20.4%	22.1%	38.5%	30.3%	23.3%	14.4%		25.0%

ABOVE FLOOD LEVEL

1977	0	0	0	0	0	0	0	0	10	17	0	0		7.4%
# OF YRS.	0	0	0	0	0	0	0	0	1	1	0	0		
% OF TIME (DAYS)	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	2.6%	4.2%	0.0%	0.0%		0.6%

FIGURE 16

MANAKAU LAKE

FREQUENCY OF DEVIATIONS GREATER THAN 5 CM FROM BAND

ABOVE BAND

	NUMBER OF DAYS												NUMBER	% OF
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	OF MNTHS	TIME
1971	0	0	0	5	31	6	0	9	0	4	25	18	6	24.4%
1972	0	0	0	8	0	0	4	0	0	0	0	0	1	1.1%
1973	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1974	0	0	0	0	17	20	0	5	0	0	0	0	3	11.5%
1975	0	0	0	0	24	0	0	0	0	0	0	0	1	6.6%
1976	0	0	0	11	21	0	0	0	0	0	0	0	2	8.7%
1977	0	0	0	0	0	0	0	0	23	31	30	1	4	23.3%
1978	0	0	0	0	0	4	0	0	0	0	0	0	2	3.8%
1979	0	0	0	6	31	12	0	0	0	0	0	0	3	13.4%
1980	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1981	0	0	0	7	31	8	0	0	0	0	0	0	3	12.6%
1982	0	0	0	0	22	7	0	0	0	0	0	0	2	8.0%
1983	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
# OF YRS.	0	0	0	4	8	6	1	1	1	2	2	2		
% OF TIME (DAYS)	0.0%	0.0%	0.0%	7.4%	45.9%	15.1%	1.0%	1.2%	5.9%	8.7%	14.1%	4.7%		8.7%

BELOW BAND

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	NUMBER OF MNTHS	% OF TIME
1971	4	13	0	0	0	0	0	0	0	0	0	0	2	4.7%
1972	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1973	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1974	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1975	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1976	0	0	0	0	0	0	0	2	20	11	24	29	5	23.5%
1977	31	13	0	0	27	30	26	0	0	0	0	0	5	34.8%
1978	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0%
1979	0	0	0	0	0	0	0	0	1	3	0	0	2	1.1%
1980	0	0	0	0	1	30	31	31	25	0	0	0	5	32.2%
1981	0	0	0	0	0	0	0	0	28	9	0	0	2	10.1%
1982	0	0	0	0	0	2	0	0	0	0	0	0	1	0.6%
1983	0	0	0	0	0	15	0	0	0	0	0	0	1	4.1%
# OF YRS.	2	2	0	0	2	4	2	2	4	3	1	1		
% OF TIME (DAYS)	8.7%	7.1%	0.0%	0.0%	7.0%	19.7%	14.1%	8.2%	19.0%	5.7%	6.2%	7.2%		8.6%

OUTSIDE BAND

# OF YRS.	2	2	0	4	10	9	3	3	5	5	3	3		
% OF TIME (DAYS)	8.7%	7.1%	0.0%	7.4%	52.9%	34.9%	15.1%	9.4%	24.9%	14.4%	20.3%	11.9%		17.3%

Namakan Lake, is quite small. In discussing constraints to regulation in Section 4.2, it was noted that it appears to be difficult or impossible to maintain levels in the operating bands with inflows over 90 percentile or under 10 percentile. If this is the case, deviations are to be expected about 20 percent of time, a number not too different from the frequency of deviations greater than 2 in. (5 cm). More work would be required to establish at what point deviations are impossible to avoid and what percentage of current deviations might be avoidable through better operation practices and more readily adjustable structures.

The relation between deviations and periods of high or low inflows is shown for Rainy Lake by Figure 17 and for Namakan Lake by Figure 18. On these graphs, the shaded bars for the inflow histogram indicate percentile inflows in the April-July period. This period accounts for about 50 percent of the total annual inflow to both lakes. The August-November and December-March periods account for the remaining 50 percent, with the fall period normally wetter than the winter. These graphs show that significant deviations from the operating bands generally occur when inflows exceed 90 percentile or are less than 10 percentile.

Figures 19 and 20 show the levels and flows for Rainy and Namakan Lakes for 1984 to date. Levels on these graphs are weekly rather than daily values and so tend to obscure deviations. However, deviations did occur above the Rainy Lake band in mid-June, at June month-end, and in mid-July. Also, deviations below the bands of both lakes occurred in late summer to fall. Namakan Lake levels dipped below its band from early September to mid-October, whereas the Rainy Lake deviation was greater and lasted from late August to early November.

Several comments can be made concerning these deviations. The deviation above the Rainy Lake band in June was supported by the IRLBC. When the level first exceeded the band, less than 3 weeks remained before the point of maximum band elevations would be reached. Based on an assessment of current basin conditions, the Board felt that advantage should be taken at that time of the available water to complete the lake refill. However, levels were not permitted to exceed the summer band level. Similar situations have occurred in other years. For example, the plots in the Appendix show both Rainy and Namakan Lakes deviating above the rising limbs of their operating bands in 1981 and 1982. In both these years the freshet arrived early and the Board was concerned that the spillage necessary to maintain levels within the bands might result in deficient levels later in the year.

Regarding the deviation at the end of June, it is the Board's opinion that operation by Boise exacerbated the situation. Levels were within the band and falling. To stabilize levels Boise began closing

FIGURE 17

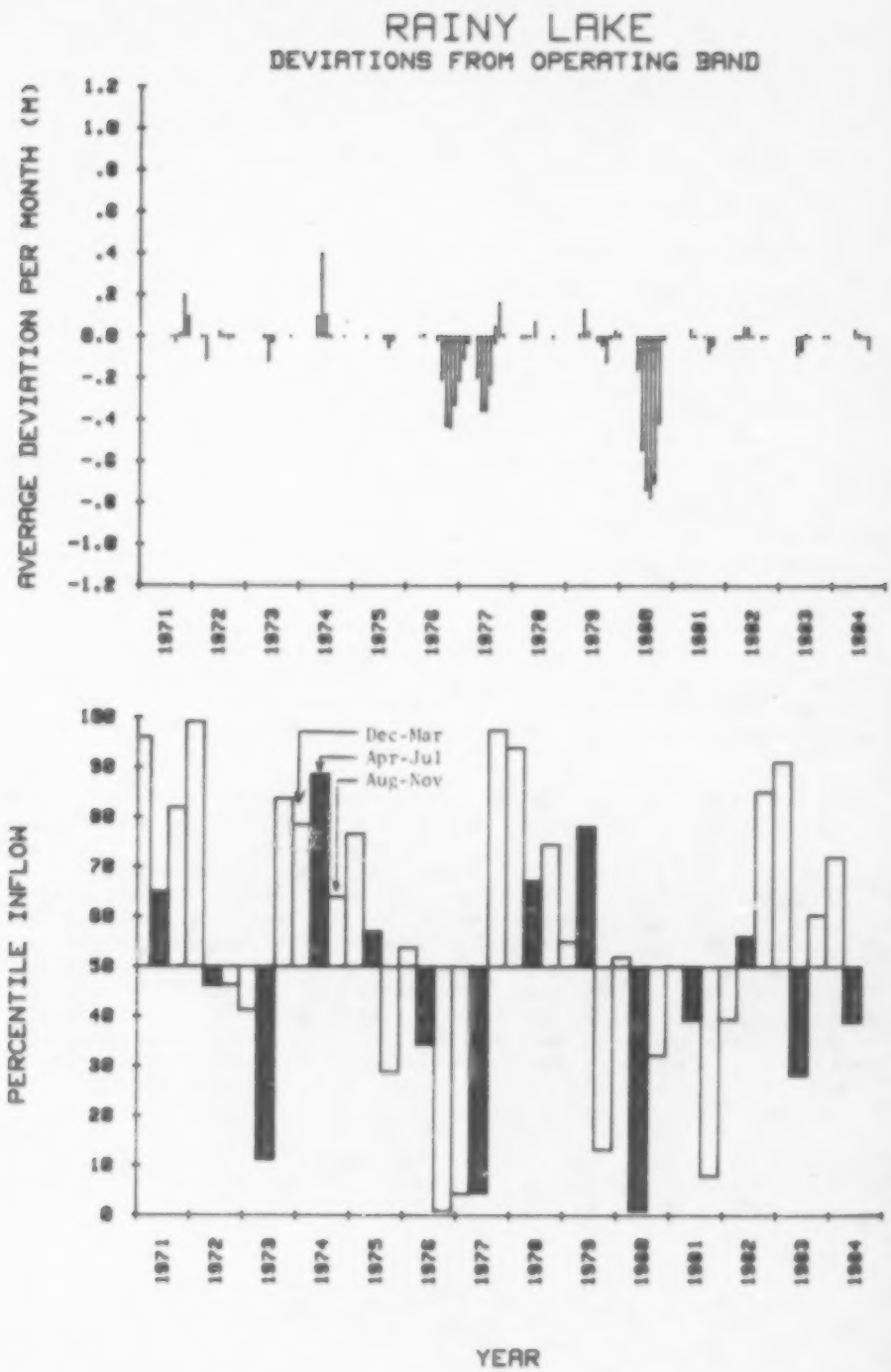

RAINY LAKE
DEVIATIONS FROM OPERATING BAND
AVERAGE DEVIATION PER MONTH (M)
1.2
1.0
.8
.6
.4
.2
0.0
-.2
-.4
-.6
-.8
-1.0
-1.2
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
PERCENTILE INFLOW
Dec-Mar
Apr-Jul
Aug-Nov
100
90
80
70
60
50
40
30
20
10
0
YEAR

FIGURE 18

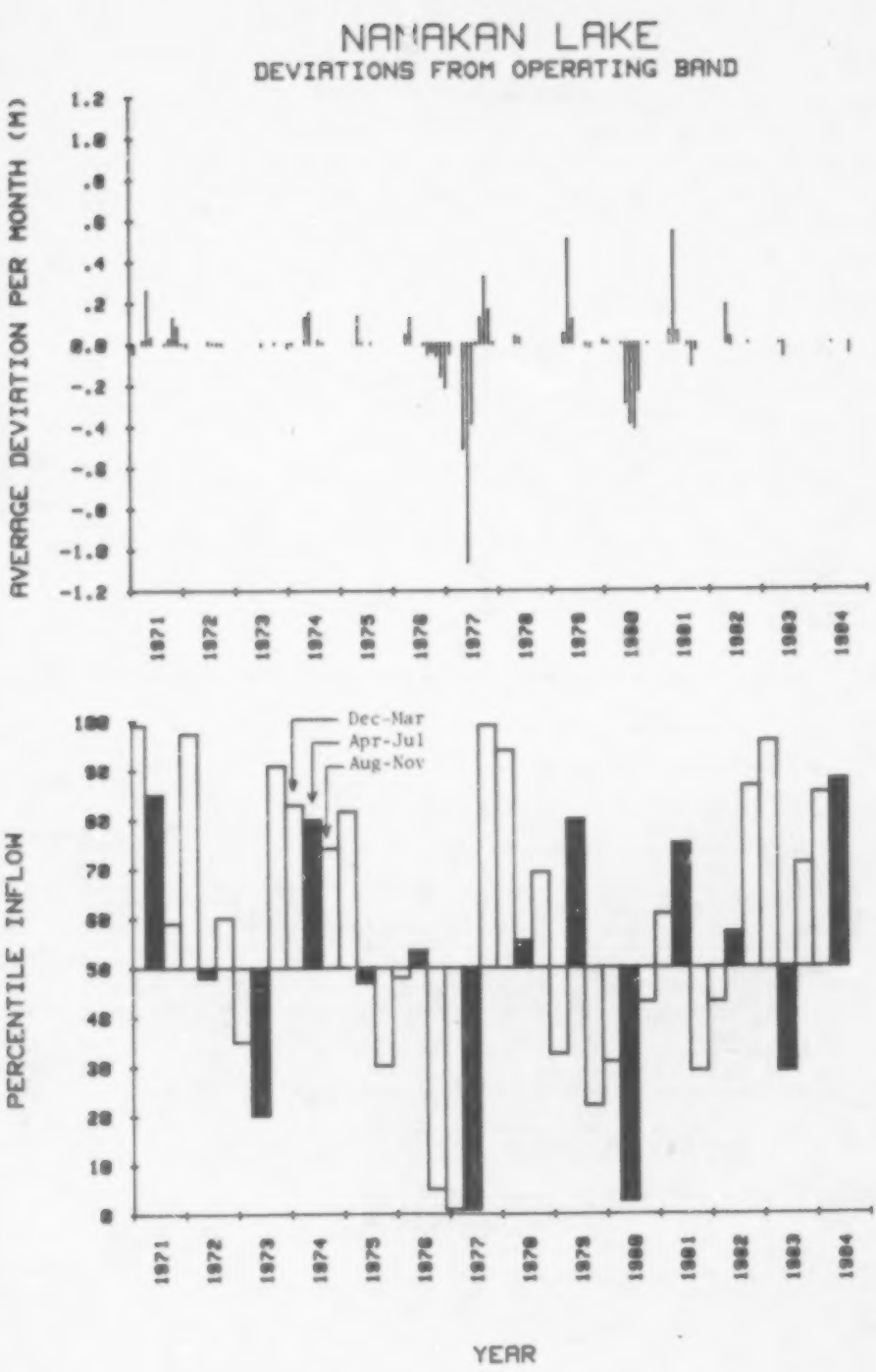

NAMAKAN LAKE
DEVIATIONS FROM OPERATING BAND
AVERAGE DEVIATION PER MONTH (M)
1.2
1.0
.8
.6
.4
.2
0.0
-.2
-.4
-.6
-.8
-1.0
-1.2
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
PERCENTILE INFLOW
Dec-Mar
Apr-Jul
Aug-Nov
YEAR

FIGURE 19

RAINY LAKE
LEVELS & FLOWS
1984

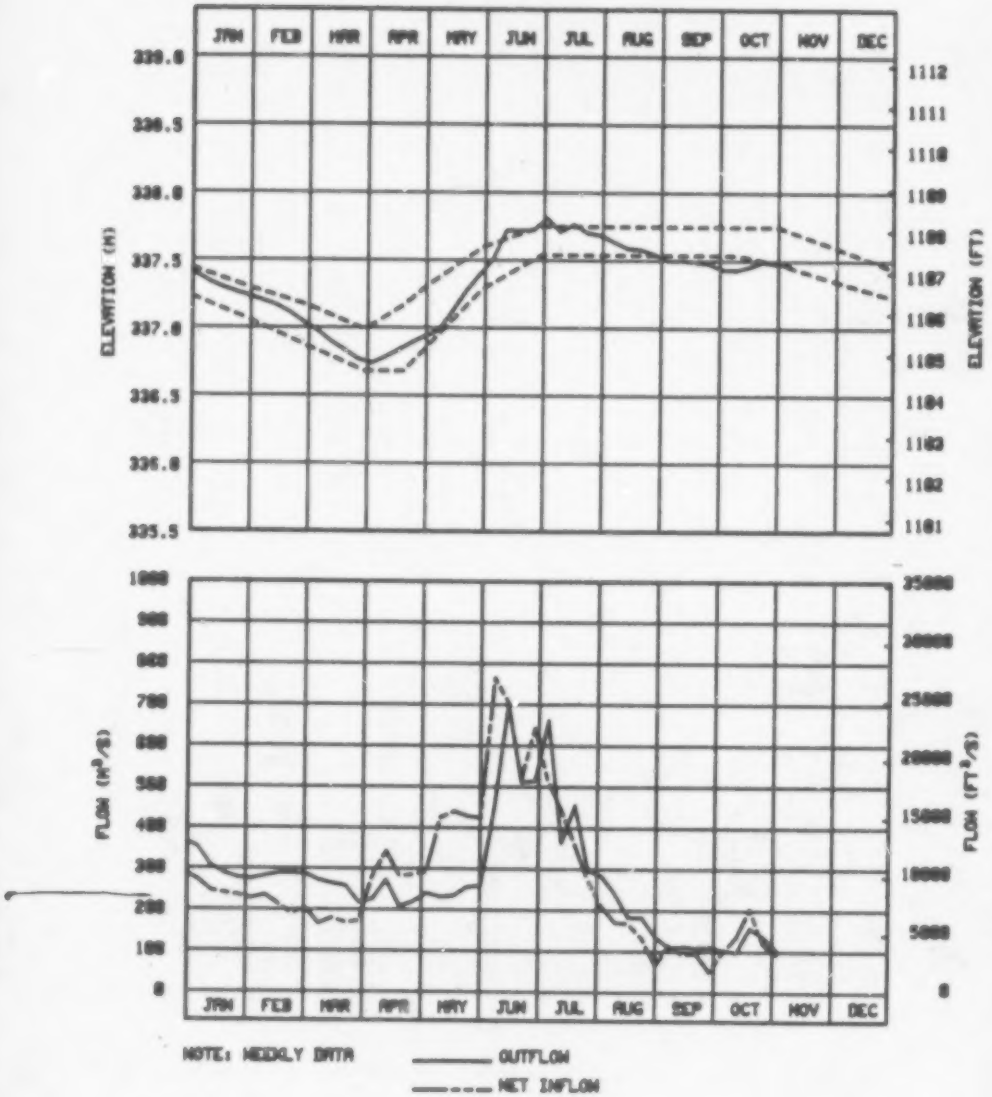
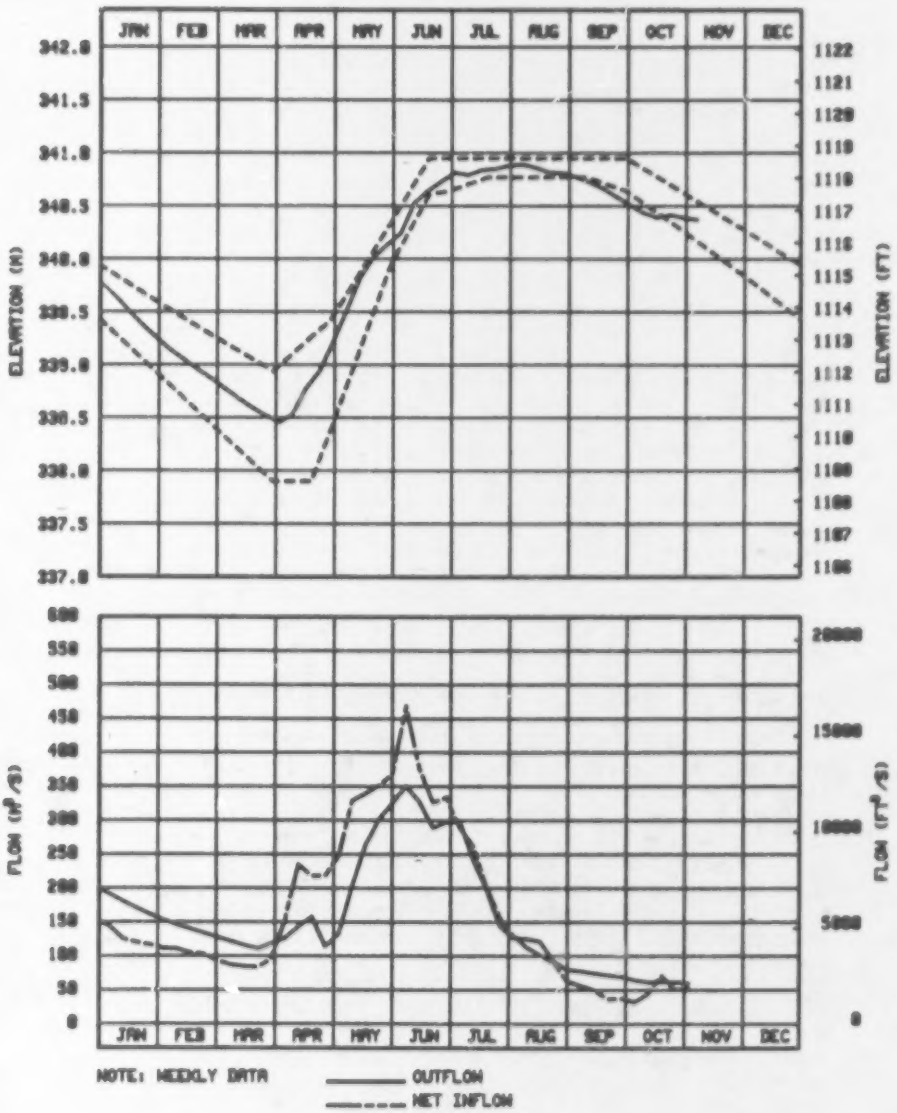


FIGURE 20

NAMAKAN LAKE
LEVELS & FLOWS
1984



sluices. However, they apparently overreacted and reduced the outflow to about 7,000 ft^3/s (200 m^3/s) less than the current rate of inflow. This resulted in rapidly rising levels, a situation which was further compounded by moderate to heavy rainfall over several days directly on the lake. A less dramatic closure and a quicker opening would have prevented or diminished this event.

Regarding the deviations below the bands this fall, inflows to the Rainy Lake basin were far below normal and were less than the total of evaporation losses plus the minimum required outflow. The outflow was reduced to the minimum specified but levels clearly could not be maintained on Rainy Lake. In the Namakan Lake basin inflows were also low but levels within the band probably could have been maintained. Nevertheless they also were permitted to drop below the band, with the Board's approval, in order to ease the situation on Rainy Lake. A reduction in Namakan Lake outflows to their specified minimum in order to maintain Namakan Lake levels would have further reduced the inflows to Rainy Lake and caused its level to decline even further below its band. When the Namakan Lake level first dropped below its band, Rainy Lake levels had already declined to levels that would not be reached by the declining portion of its band for another month and a half. In contrast, as the Namakan band declines earlier, actual Namakan levels were only leading its declining minimum band levels by less than two weeks. Conversation with several interests on the lake revealed that this was not causing any problems. Consequently Namakan outflows were not reduced to minimum. The drought period ended in mid-October with several weeks of heavy rains. Namakan Lake levels quickly returned to within its operating band. However, in the case of Rainy Lake, Boise immediately increased its powerplant flows with the result that Rainy Lake levels hovered just under its operating band for another two weeks before finally entering the band in early November.

The above examples from the current year show several instances of lake level regulation by Boise Cascade being less than might be expected. This is not totally a function of Boise operating practices but also of the poor equipment at these sites. The examples also show that the current Board members view the operating bands, to a certain degree, as guides to regulation rather than as rules to be rigidly followed. The bands provide a general framework but may not give the best policy for any specific year. The Board believes that some variation to better suit the timing of individual freshets or to better balance the impacts of events such as droughts is appropriate. This view was apparently shared by the previous Board members who prepared the 1956 Report to the IJC prior to the 1957 IJC Order. They stated that the rules of the time should be targets, not requirements. However, the Board members who prepared the 1969 Report of the Board prior to the 1970 Orders stated that the bands, in particular the rising upper limbs, should be rigidly observed. The question of how the operating bands should be interpreted by the Board and of how tightly the operations of Boise Cascade should be controlled may be one requiring further study or direction from the IJC. In any case, the visual impression given by the graphs of levels in the Appendix is that the overall objectives of regulation are being met, even though absolute criteria may not be satisfied.

5. HYDROCLIMATOLOGY

Future availability of water is one of the primary uncertainties in the planning and regulation of water resource projects. Traditionally, hydrologists have relied upon classical statistical analyses and assumed that the past hydrologic record is representative of the events likely to occur in the future. However, this approach does not account for long-term climatic variation or change. Reconstruction of climatic history provides sufficient evidence to document that climate is not stationary. In the last 1,000 years, no two centuries were anything alike. The climate of the last 100 years is not typical of the previous 1,000 years. In the perspective of the last one million years, it is very abnormal. Although it is unlikely that catastrophic climatic changes will occur in the near future, significant variations in climate are expected to occur because of natural variations and/or perhaps man-induced variations in the chemistry of the atmosphere. Therefore, the consequences to water resource management, planning, and project operation, of projecting the statistical properties of the past record to the next 50 to 100 years, could be quite adverse and this underscores the compelling need for water resource managers to anticipate future climatic conditions.

In the upper Mississippi River watershed, there is a definite pattern and link between climate and water levels in the lakes and streams of this region. This pattern is not merely a within-basin process, but rather it is a basin response to a major anomoly in the atmospheric circulation; an anomoly that is often near hemispherical in areal magnitude. This pattern of variation in runoff is also found in the lower Rainy Lake watershed as manifested by the Rainy River at Manitou Rapids, and is a classic example of hydrologic persistence in the flow records. Hydrologic persistence is defined as the tendency for high flows to follow high flows and low flows to follow low flows, and is attributed to storage processes in the atmosphere and in the drainage basin, either surface or subsurface.

Historically, the Lake of the Woods watershed has experienced periods of extreme high and low lake levels, which have caused hardship for the various water interests in the region. It is prudent to consider the effects of long-term climatic variations and their impacts on water requirements as a risk management procedure, in planning for the watershed's future socio-economic growth. By developing possible future hydroclimatic scenarios, water resource managers may be able to anticipate future climatic variation, thereby improving regulation, planning, and management of the water resources of the Lake of the Woods watershed.

At the IRLBC Public Meeting in Fort Frances this spring, a presentation was made describing the impact of climatic trends on water levels and flows. The need to plan for and adjust to future changes was noted. The Board stated that basin residents should define their requirements, desires and constraints and present these to the policy makers.

6. CONCERNS

The International Board members are aware of a number of concerns regarding lake regulation held by different interests in the Winnipeg River basin boundary waters. The members also have a number of their own concerns. These are dealt with in the following two sections.

6.1 Groups in the Basin

Concerns of groups in the Rainy-Namakan basin are summarized below. In general most input comes from the United States portion of the basin.

(1) Resorts/Outfitters

- Although the current regulation scheme has greatly extended and stabilized the period of high summer levels compared to natural conditions, it appears that those in the tourist industry would prefer a longer season, primarily through high levels being achieved earlier in the spring but also through some extension into the fall. Most of the interest in this regard pertains to Namakan Lake. A main concern is adequate navigation levels by the start of fishing season in mid-May. Several outfitters in the Ash River area who rent houseboats require levels close to the summer range in order to navigate the river and are quite vocal on this issue.

- There is some concern that early-May levels on Rainy and Namakan Lakes are typically too low for good fish spawning conditions. Some claim that minimum water levels suitable for spawning are above the upper limits of the current operating bands in the first two weeks of May. However, this view is not supported by a 1981 report by the Minnesota Department of Natural Resources on the effects of water levels on Walleye and Northern Pike reproduction. This report states that levels lower than the operating band are still adequate for spawning in Namakan Lake. The report was less definite regarding Rainy Lake, noting that there was no evidence of water levels being detrimental but stating that conditions might be better with higher levels. Although the mean level during spawning has actually been lower in both lakes since the 1970 IJC Orders came into effect, fish stocks have increased, presumably due to factors such as reduced fishing pressure.

- There is a general awareness that flows through Gold Portage are increasing. There is concern that continued erosion will lead to lower Namakan Lake levels.

- There is growing concern about the impact of Voyageurs National Park (U.S.A.) on the area. With the expropriation and closing of resorts in the area by the Park Service, it is felt that access to the area has been reduced and has been restricted to only people capable of outdoors camping. Many claim a decline in business due to the Park. Further upstream in the basin, in the Superior National Forest in the United States and Quetico Provincial Park in Canada, motorized access of any kind is banned in some areas and the land is preserved as wilderness. There appears to be a growing reaction by tourist operators in the United States. One claim being made is that such restrictive practices may violate the "free access" clause of the Boundary Waters Treaty.

- There is a general feeling that regulation of lake levels still favours power production by Boise Cascade in Fort Frances-International Falls, to the detriment of other interests. At public meetings it is often stated that the IRLBC should exercise more control over Boise Cascade, particularly in the spring when levels are low and inflow prospects seem poor. It is felt that reacting only when the operating band limit is reached is too late.

(2) U.S. Forest Service/Quetico Park

- Both Services intend to continue their policy of non-motorized access and the restriction of any development that impacts on the wilderness experience. Hydrometeorological monitoring stations and associated equipment are viewed as undesirable.

(3) Voyageurs National Park (VNP)

- While U.S. Park Service policy does not favour artificial regulation, the Park Service recognizes that a return to natural conditions on Rainy and Namakan Lakes would not be appropriate. However, it does believe that changes might be made to the current operating bands to improve conditions for fish and wildlife. A study has been mounted toward this end. To date it includes the development of a computer model to simulate reservoir operations and the initiation of research to determine water level criteria for fish, marine life, shore nesting bird species and others. A paper on the computer model was presented at the Annual Conference of the American Water Resources Association in August of this year. Runs of the model to date have focussed on higher water levels earlier in the spring since the Park Service believes that this would be better for the fishery and certain bird species.

(4) Boise Cascade Corporation

- Those involved with water level regulation at Boise Cascade believe that strict adherence to the IJC operating bands leads to wastage of water. In particular they would prefer to allow levels to rise above the band when the spring runoff starts early.

- The company still harbours some resentment for the loss of storage and the loss of operating freedom when the IJC Orders were imposed.

- Although the company tried to sell the Namakan and Rainy Lake dams several years ago, it now apparently has decided that it should retain ownership. There is concern that the dams may be expropriated and this is reflected in a reluctance to make expenditures toward their maintenance or rehabilitation. If a long-term guarantee of continued ownership and continued benefit to the company was possible, expenditures might be more readily made. Plans currently exist for turbine upgrades in the American powerhouse at International Falls, but apparently no expansion is planned, as was once the case.

- There is apparently some feeling within Boise Cascade that the lakes could be regulated more effectively for power production within the operating bands. To this end the company has tentatively approached the IRLBC concerning the possible funding of additional gauging which might lead to better inflow forecasts.

Concerns of groups in the Lake of the Woods basin will be considered next. Basically, all interests are displeased with levels corresponding to the mandate of the ILWCB; that is, levels above 1061.0 ft. (323.39 m) or below 1056.0 ft. (321.87 m). The degree of dissatisfaction is probably greater with low water than with high water. However, most specific concerns lie within the range managed solely by the Canadian LWCB.

(1) Native People

- The main concern of the Objibway Indians is the impact of water levels on the growth of wild rice. Generally water levels in the 1058-1059 ft. (322.48-322.78 m) range during the growing season from April through September are believed best, with the further restriction that the rate of rise of level should be limited during the plant's floating leaf stage, usually in June. Unfortunately June is typically the largest inflow month for Lake of the Woods and in many years it is not possible to restrict the rate of rise to tolerable limits. Further, full advantage must usually be taken of these inflows if adequate levels are to be reached for summer uses and winter storage needs. Usually the best wild rice crops coincide with drought years.

(2) Outfitters/Cottages

- Good summer recreational levels for boating are important to both Outfitters and Cottagers. Levels in the 1059-1060 ft. (322.78-323.09 m) are considered desirable.

- The fishery is very important to Outfitters and to most Cottagers. Concern has been very high in recent years due to declining fish stocks and consequently good spring spawning conditions have been considered to be crucial. For this purpose levels of at least 1058.0 ft. (322.48 m) by mid to end-April are desired.

(3) Hydropower

- Lake of the Woods is an important storage reservoir for Boise Cascade's powerplants at the outlets and for Ontario Hydro and Manitoba Hydro powerplants down the Winnipeg River. Full use of the available storage is a prime objective, with winter flows being the most important. Deeper winter drawdown might further this objective but would make the refill to levels needed for other users less certain.

6.2 Board

The concerns of the International Board members are outlined in turn under the following headings. The concerns are not ranked.

(1) Structures

The issue of structural condition and limitations of the dams controlling the outlets of Lake of the Woods, Rainy Lake and Namakan Lake have been discussed in Sections 3.2 and 4.2 of this report. The effect of these limitations on regulation of the lakes is of some concern, particularly at International Falls and Kettle Falls. Further, if these dams were being built today, their design would include consideration of the Probable Maximum Flood. Based on the frequency with which the outflow capacities of the structures is exceeded, it is doubtful whether these structures could withstand such an event. Consequently there is also some concern over the ultimate safety of these structures. As the Canadian LWCB and the IJC have a responsibility for regulation in this system, it is felt that they also have some responsibility for assuring themselves as to the adequacy of the structures by which regulation is achieved.

The age of these dams ranges from 70 to 86 years. The useful economic life of new concrete structures is normally considered to be 50 years without major rehabilitation. The overall condition of the dams is generally satisfactory at present, due in part to recent

structural repairs. However, they have reached the point where major rehabilitation or replacement must be given some consideration, due to age and the vast amount of time that would be required to accomplish an international undertaking of this scope.

Major rehabilitation of these dams would remove existing structural limitations, could provide greater hydraulic efficiency for hydroelectric power generation and flood control, and would insure reliable control of lake levels in the Lake of the Woods watershed well beyond the year 2000.

(2) Data Quality

The recent hydrologic model study, undertaken by Voyageurs National Park, and efforts by the Lake of the Woods Secretariat to model the Lake of the Woods watershed, have underscored deficiencies in the historic record of outflows from Lake of the Woods, Rainy Lake and Namakan Lake. These deficiencies have resulted from use of inaccurate flow ratings in computing outflows, unmeasured flow leakages through the dams, and the natural overflows at Gold and Bear Portages. It is felt that the effects of these deficiencies on the historic outflow records should be assessed to determine their significance and efforts should be made to correct them. For the current VNP study, and for any future study on regulation that may be required by the IJC, it is important to have as accurate records as possible and, further, to know how data errors may influence the study results.

Some of the data problems are listed below:

- Namakan Lake
  - flow records are only for the Kettle Falls structures and do not include the two overflows. If the lake level falls below the lower limit in the summer period and structural outflows are reduced to the minimum, the error in the historic record due to unrecorded Gold Portage flows would be 43 percent. With the average levels and outflows recorded for September, the error is 14 percent.
  - one overflow, Gold Portage, has enlarged tenfold since 1958.
  - the Kettle Falls rating curve still in use has not been applicable since 1962-69 when the structures were rehabilitated.
  - leakage has at times been significant but has mostly been undocumented.

- Rainy Lake
  - theoretical ratings are used but the approach conditions and the location of the headpond gauges severely violate the assumptions made.
  - the spillway discharge coefficient was arbitrarily changed from 0.68 to 0.60.
  - uncertainty exists over whether the removal of pulpwood grinders from the U.S. side rendered the ratings invalid.

- Lake of the Woods
  - periodic leakage problems.
  - new rating adopted in 1971 - comparison shows that the new rating yields on average 7 percent greater outflow for the same conditions. Previous records have not been adjusted, yet, since no structural changes have occurred, the new rating should be just as applicable right back to 1927 as since 1971.
  - outflows are generally believed to be incompatible with flows recorded just downstream at the Whitedog powerplant. Some say that the situation is worse with the new rating.

(3) Boise Cascade Operations

Boise Cascade Corporation is responsible for the operation of the structures controlling Rainy and Namakan Lakes. Basically this operation has been adequate. The historical water level graphs in the Appendix show that the IJC level objectives have generally been followed. Further, from the analysis in Section 4, it is clear that the major periods of deviation from the operating bands could not have been prevented. However, the Board believes that improved regulation practices might have reduced the severity of these periods and might have eliminated some of the more minor deviations. Currently, regulation decisions are made by Boise Cascade personnel who have not had the benefit of formal hydrologic training and who have little time amid their other duties to devote to this task. Decisions do not always utilize all available basin information and data analysis is limited. Regulation operations could improve if given a higher priority within Boise Cascade and if based on a more comprehensive program of data collection and analysis. Ideally, trained hydrologists should be involved.

(4) Gold Portage Overflow

Details on this overflow were given in Section 3.2. As outlined in recent IRLBC annual reports to the IJC, a discharge rating has been developed for the overflow and is being continually updated, gauging has been installed to monitor daily flows and erosion is being

monitored annually at several sections. Current indications are that the erosion has slowed down or stopped. However, the site must be watched closely in the future since continued erosion could further diminish the ability to control the levels of Namakan Lake. If further enlargement occurs, it will be necessary to consider a structure at this site. As it is, its capacity at the lower limit of summer levels is approximately half of the minimum outflow specified in the IJC Orders. In this context it is important to note that the IJC Orders specify the minimum outflow as "...the total outflow from the dams at Kettle Falls...". Thus the actual minimum outflow at such times could be up to 1.5 times the minimum specified.

(5) Gauge Access

Streamflow gauges at the outlets of Lac la Croix and Basswood Lake, upstream of Namakan Lake, are important indicators of inflows for the IRLBC and for Boise Cascade. However, the area in which the Basswood gauge is located has recently been declared a non-motorized area of Superior National Forest and a similar policy, though unlikely, has been discussed for Lac la Croix. With no motors permitted, it is now a long and difficult journey by canoe in summer or snowshoe in winter to service the Basswood gauge. This may result in degraded data quality and in periods of missing records when malfunctions occur. Further, any additional gauging desirable in the future is likely to involve sites in Superior National Forest or Quetico Provincial Park. Under current policy it would be very difficult to gain permission for a gauge installation in such an area and, if installed, access would be an ongoing problem. The IRLBC intends to ask the U.S. Geological Survey and the Water Survey of Canada to negotiate a solution to this problem with the agencies involved. If no solution is forthcoming, it may be necessary for the IJC to become involved.

(6) Study by Voyageurs National Park

As outlined in Section 6.1, a study is underway by Voyageurs National Park concerning the current IJC operating bands for Rainy and Namakan Lakes. The IRLBC understands that this study will not be completed for some time yet but fully anticipates that, once the study is complete, the Board and/or the IJC will need to address the conclusions of the study and whether or not the operating bands should be adjusted. The Board met with the Park Service in April of this year to learn more of the study. In the ensuing discussion, several recommendations were made by Board staff regarding the simulation model. These centred on the need to perform sensitivity tests to determine the impact of potential data errors on model results, the need to use various periods of historic inflow record to ensure that any modified operating bands could accommodate the variation and trends in inflow which the record displays, and the need to account for the fact that the model has perfect foreknowledge

of inflows one month in advance whereas, in reality, water level managers must cope with much more uncertainty. In addition, the Board strongly recommended that the Park Service should attempt to consider in the study the concerns of all affected interest groups on the lakes as a better, more complete report would result and, in any case, all interests would have to be considered at some point before any action could be taken. The Park Service subsequently requested the Board to assist in assembling a forum of affected parties to discuss concerns to be addressed by the study. However, as directed by the Commission, the Board responded that while its support staff could provide some assistance in proposing attendees and providing encouragement and advice, the Board could not become directly involved as this would compromise its ability to impartially assess any resultant proposal. No further follow-up in this regard has taken place. However, the Board support staff has complied with a number of requests for hydrologic and hydraulic data and other information and the Park Service has been very open about its work in return. In addition, the support staff, as well as Boise Cascade representatives, attended a workshop held by Park Service researchers on the project. Based on these contacts, the Board understands that environmental issues are being addressed in a very comprehensive manner. However, without input from other groups, other interests are not likely to be similarly considered. Also, as any modelling work is of necessity dependent on simplifying assumptions and the data available, the results are subject to interpretation. Consequently, the Board is concerned that the study may not result in any clear solutions. An IJC-sponsored investigation may ultimately be required.

(7) Support for Board Activities

In recent years the amount of public pressure on Control Boards and other agencies involved in water resource management has been increasing. Unfortunately, at the same time, restraint programs in both countries have limited the resources available to respond to the new requirements. It is felt that IJC Boards in particular may be affected by this situation. Resources are not provided directly by the IJC. Board members and their support staff serve the IJC on a part-time basis, using to a certain extent the resources available to them through their main programs. With restraint, it is more difficult to divert the resources, in particular manpower, from main programs to support needed IJC activities. In the case of the IRLBC, resources are not available to address the data problems mentioned under item 2 nor to thoroughly address the questions likely to result from the study mentioned under item 6. The IRLBC is most likely not unique in this regard. The IJC may need to consider the means by which its work is to be conducted in the future.

(8) Board Role

The role of the IRLBC needs to be clarified in several regards. For example, the Board has held public meetings for many years. The public attends in the belief that their concerns will be listened to and responded to. They expect the Board to be proactive in addressing their regulation concerns and to anticipate water shortages or surpluses. In fact, the Board has no such mandate. It can only be reactive to the directives of the IJC and to violations of the operating bands. What is the duty of the Board regarding the concerns of the public? Might not a proactive approach at times better serve the community? Is the initiative mentioned in the last paragraph of Section 5 acceptable?

Regarding the study by Voyageurs National Park, the IRLBC sees a lack of leadership in bringing together the parties concerned over regulation issues and progressing to an amenable solution. The Board seems to be a logical vehicle for addressing such concerns but does not have the resources to become involved and has been directed by the IJC not to become involved. How should these issues be resolved?

Regarding regulation of Rainy and Namakan Lakes, the 1970 IJC Order states that "The Companies .... shall operate the discharge facilities .... as authorized by the IRLBC .... that insofar as possible the level .... will be between the following maximum and minimum elevations....". This could be interpreted that the IRLBC may direct Boise Cascade operations. However, the Directive to the Board sounds much weaker, stating that "Whenever, in the opinion of the Board, the terms of the Order are not being complied with, the Board shall so inform Boise .... and make such recommendations as ....". What is the extent of IRLBC authority in supervising Boise Cascade operations?

(9) Representativeness of Public Comment

In Section 6.1 the concerns of various interests are summarized as understood by the Board. However, the Board's contact with people in the basin is limited. While public involvement was much greater at the time of the original Reference and the subsequent Orders, there is now much less involvement, which is normal as people become used to and adapt to procedures long in place. Consequently it is unknown if the limited input being received is representative of the community at large or only a vocal few.

(10) Watershed Strategy Plan

The Lake of the Woods watershed encompasses a vast sparsely populated region, having abundant water resources. Questions of proper utilization of these resources by competing water interests have resulted in some polarization and animosity between the various interests. Water resources development in the watershed has been based upon each interest looking out for itself, which has generally hindered effective development and utilization of resources.

The involvement of the International Joint Commission in providing guidance in matters of regulatory function and resource development has been a stabilizing influence in the region. However, if future water resources development in the region is to be proper, fair to all interests, and effective, a cooperative effort among the various interests must be fostered and a sense of direction established. This direction would be provided by a watershed strategy plan for water resources development. Development of this plan would be an international undertaking and specific suggestions are not offered in this report. However, it is quite clear that some movement in this direction is necessary to solve problems such as rehabilitation or replacement of the aging dams at Kenora, International Falls, and Kettle Falls.

7. CONCLUSIONS

A great deal of information has been given in this briefing paper. Even so, much has been glossed over, considering that regulation activities in the basin span more than 80 years. To assist in locating more detail, if required, a reference list of selected documents is given in the Appendix.

It is hoped that this paper will itself be a useful reference document for the Commission. It is expected that it will generate

questions by the Commission and perhaps further discussion. This will be welcomed by the International Boards and will indicate that this paper has served its purpose.

In conclusion, the members of the International Boards would like to highlight the following opinions:

- regulation practices for Lake of the Woods are adequate

- in general, the existing IJC Orders for the regulation of Rainy and Namakan Lakes are adequate. In making this statement, the members assume that the operating bands may be interpreted as guides rather than as rigid rules, thus allowing for a component of engineering judgement in their application. However, these bands have not been objectively assessed in over 15 years. The study currently underway by Voyageurs National Park may force such an assessment.

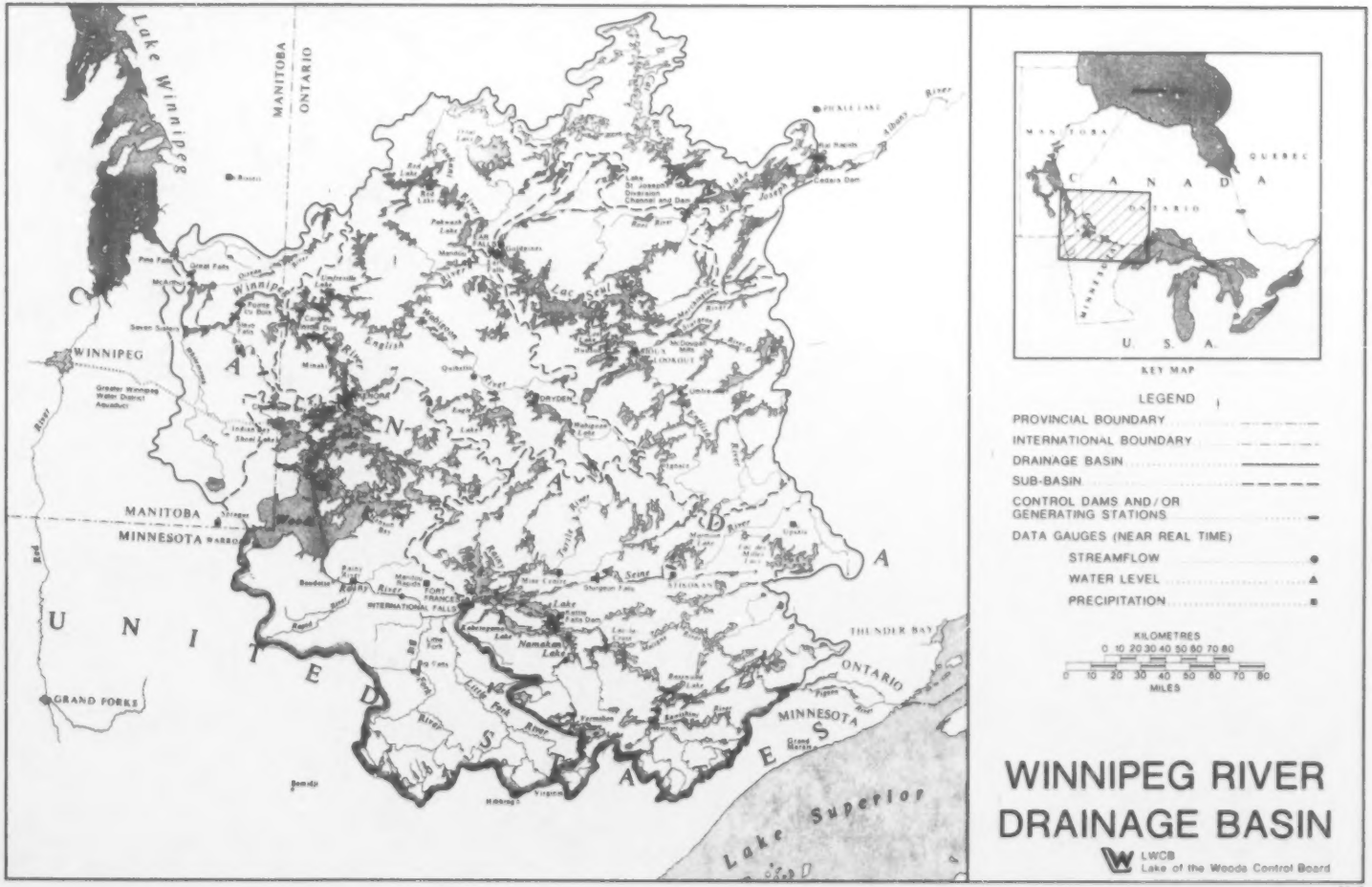
- all structures in the basin by which regulation is made possible are nearing the end of their useful lives. Although the structures are privately owned, it is assumed that some governmental or public input would be involved in their replacement since they regulate multi-use international waters. Considering the lead time required for capital projects, especially in boundary waters, planning for their replacement should start now. Replacement of the structures will involve consideration of outflow capacity and in this regard studies should be performed which will consider the operation of the whole system, not just individual lakes in isolation.

- any consideration of replacement of structures or review of regulation policy should be performed in a broader framework of the overall objectives for the region. There are a number of interests in the basin whose activities related to the water resource are in conflict, to a greater or lesser degree. If future development and use of the resource is to be fair to all interests, a cooperative effort must be fostered among the various interests and an overall basin plan must be developed to provide a clear sense of direction.

- the International Boards could play a useful role in addressing the concerns of citizens regarding regulation and in providing at least an initial focus for discussions concerning dam replacement and basin plans. However, this would require authorization for the Boards to adopt a proactive rather than a reactive posture. Also, current resource levels would not support much involvement.

- a number of the concerns expressed by citizens in the area go beyond the water level regulatory role of the Control Boards. For example, there are concerns that certain jurisdictions may have acted arbitrarily, and perhaps in contravention of international treaties, with regard to means of access to the area and limitations on activities. Some of these concerns may require investigation directly by the IJC under the terms of the Boundary Waters Treaty and some, of a more commercial nature, may require consideration by the governments of the two countries.

APPENDIX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0 10 20 30 40 50 60 70 80
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DRAINAGE BASIN
LWCB
Lake of the Woods Control Board
83-12

WATER LEVEL PLOTS FOR: LAC LA CROIX

NAMAKAN LAKE

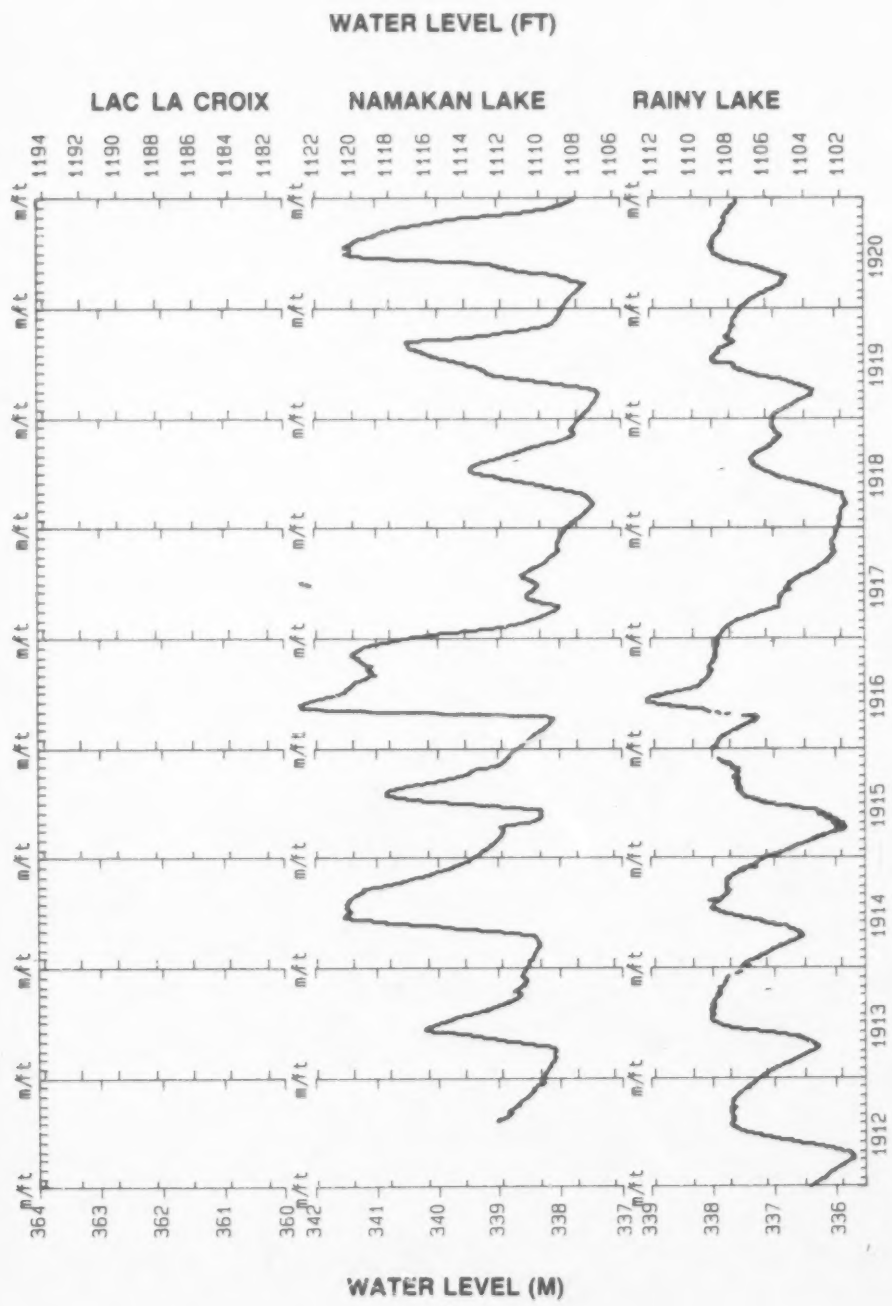
RAINY LAKE

LEGEND

RECORDED WATER LEVEL ——————————

HISTORICAL RULE CURVES
(IJC ORDERS OF 1949, 1957, 1970) - - - - - - - - - - - - - -

LAKE LEVELS ABOVE WHICH ALL GATES
MUST BE OPEN (1970 IJC ORDER) ——— - ——— - —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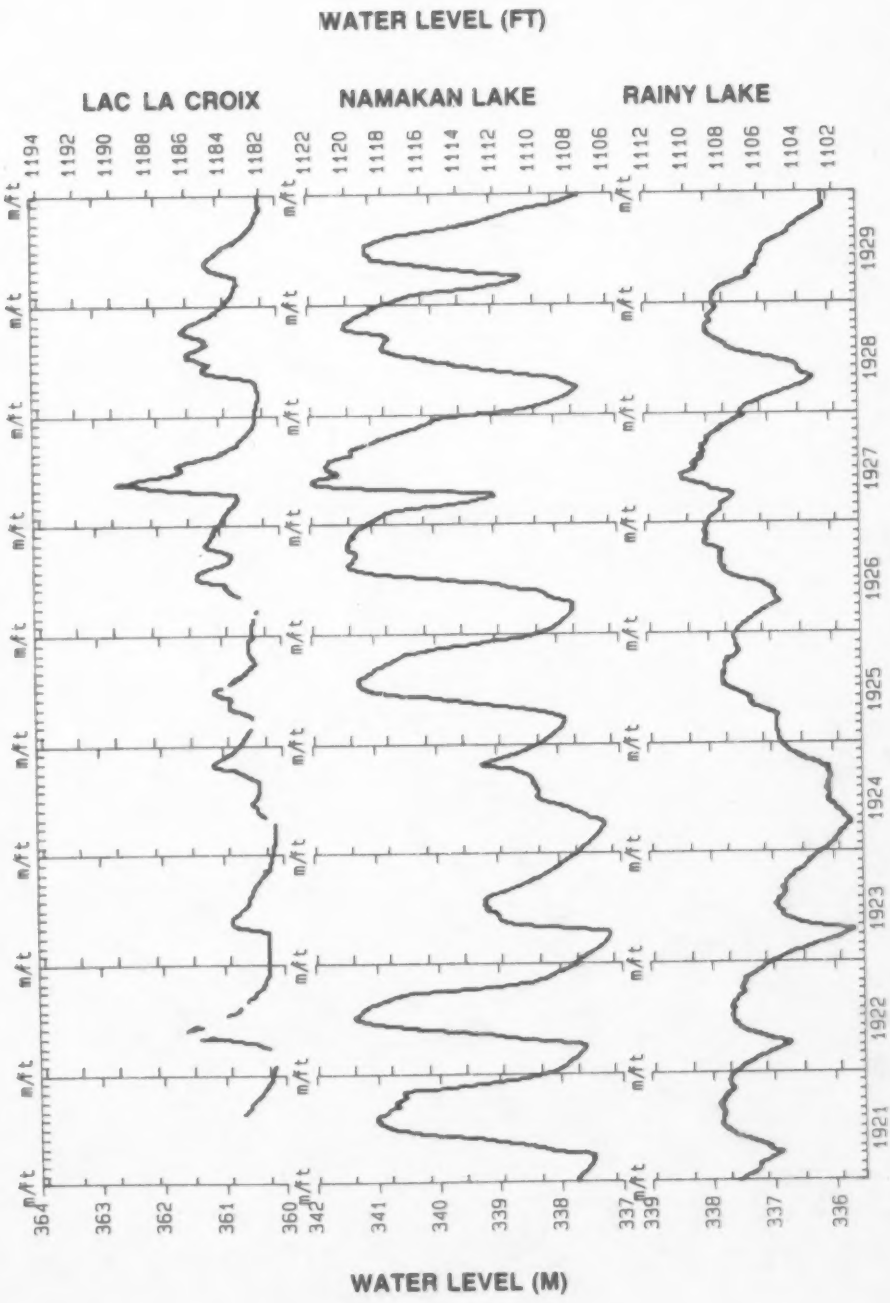
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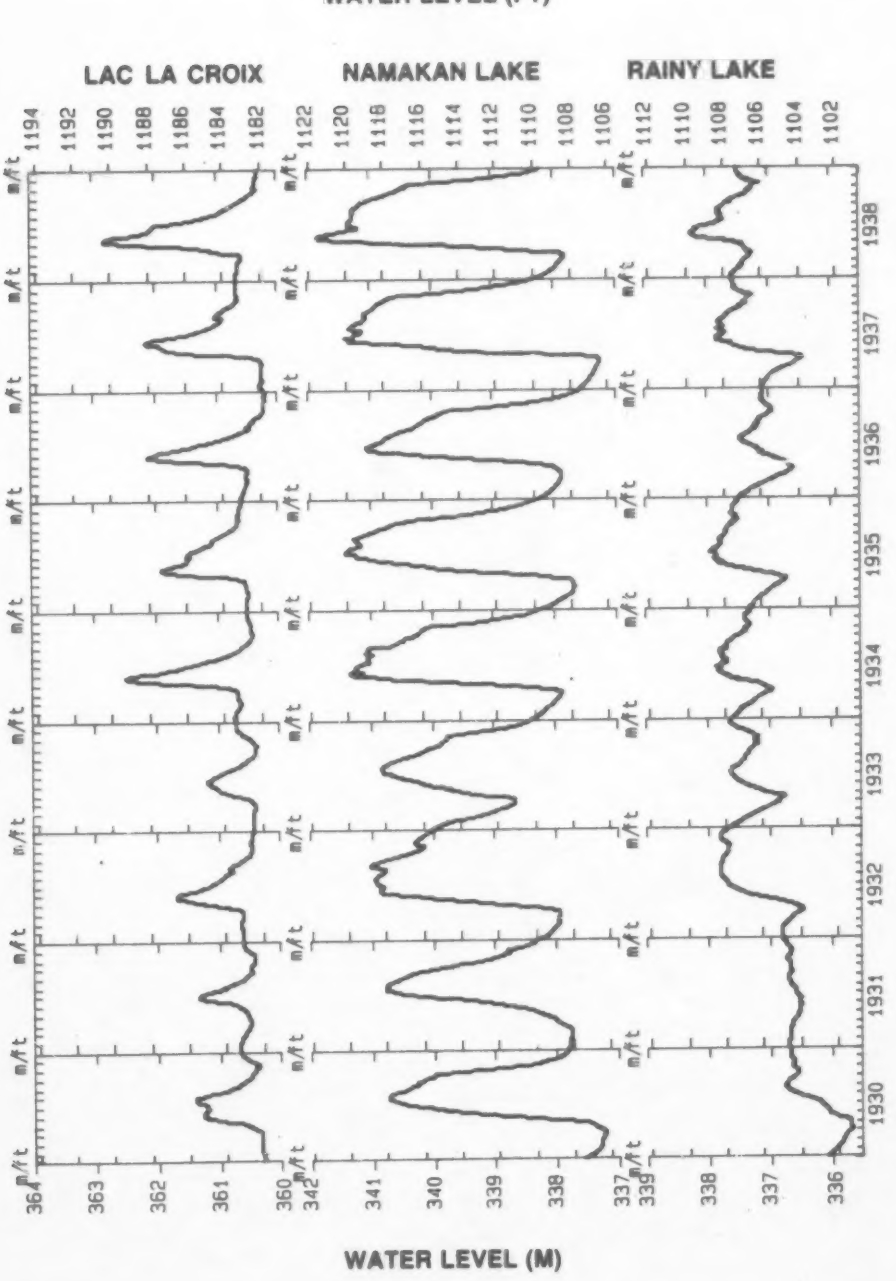
WATER LEVEL (M)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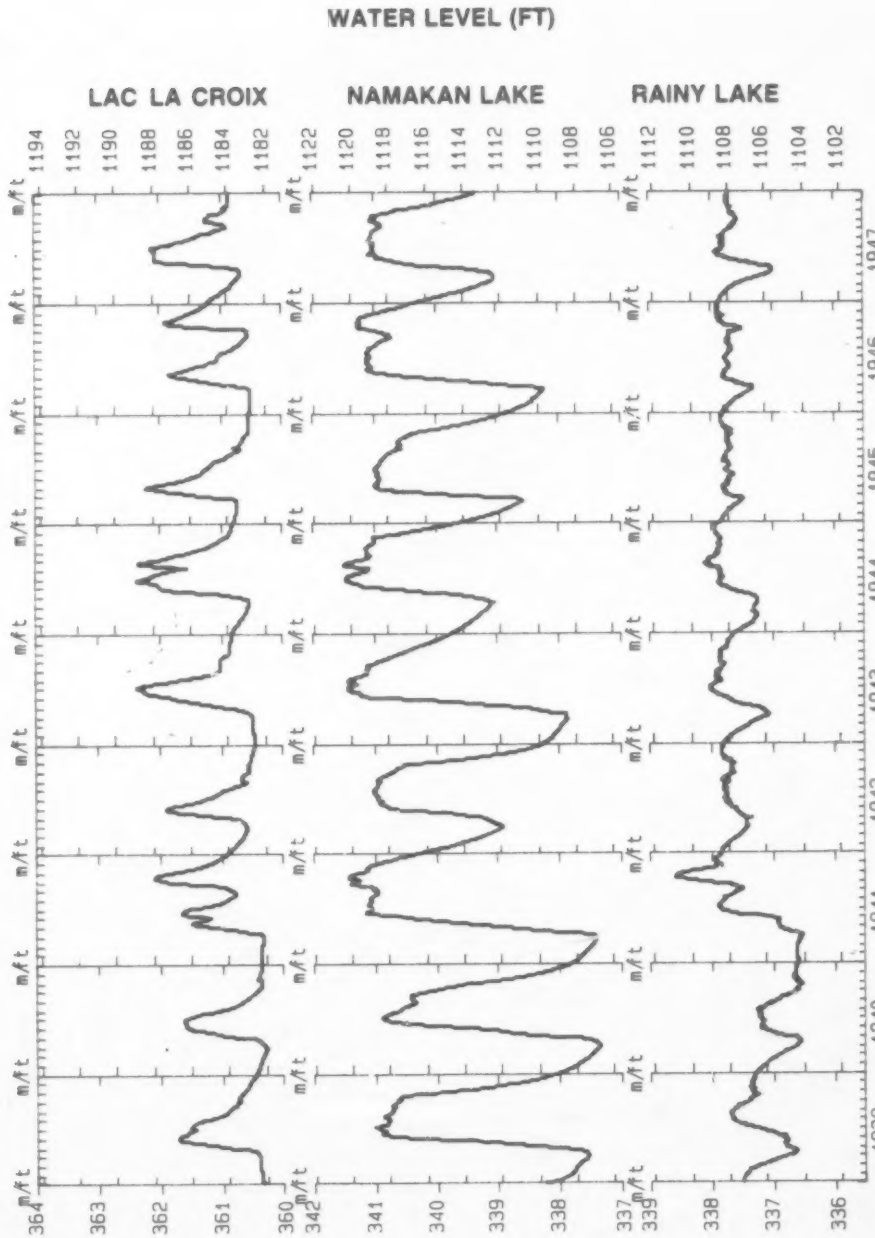
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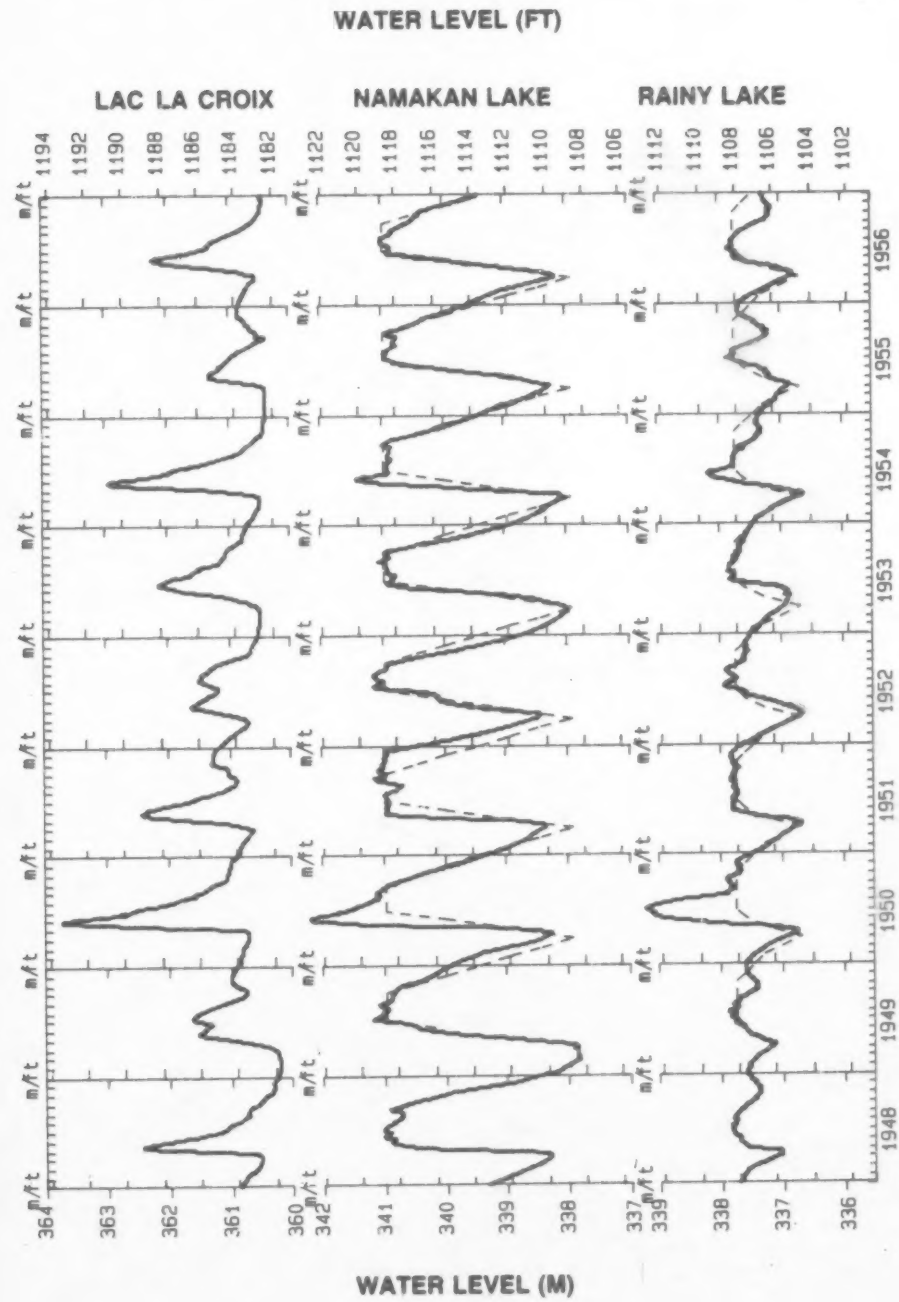
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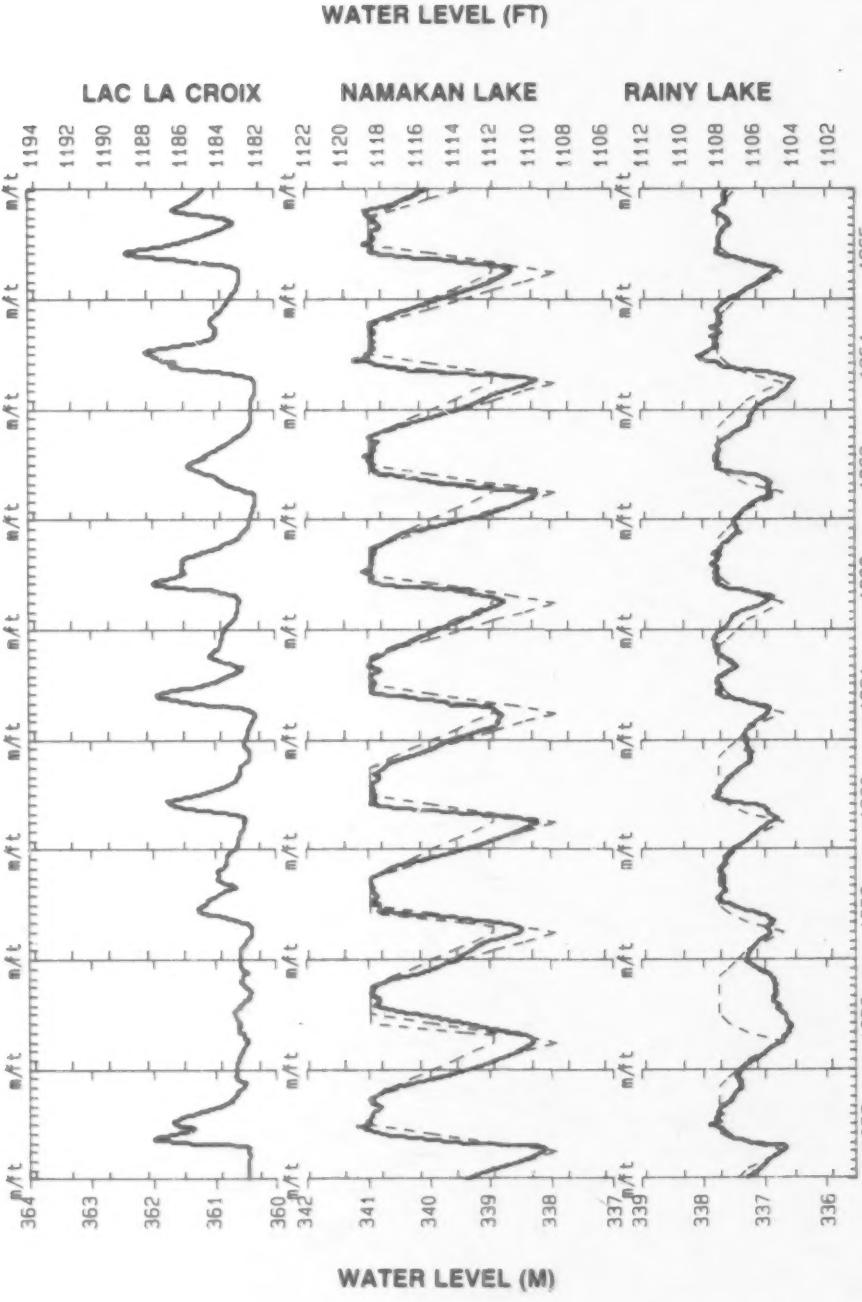
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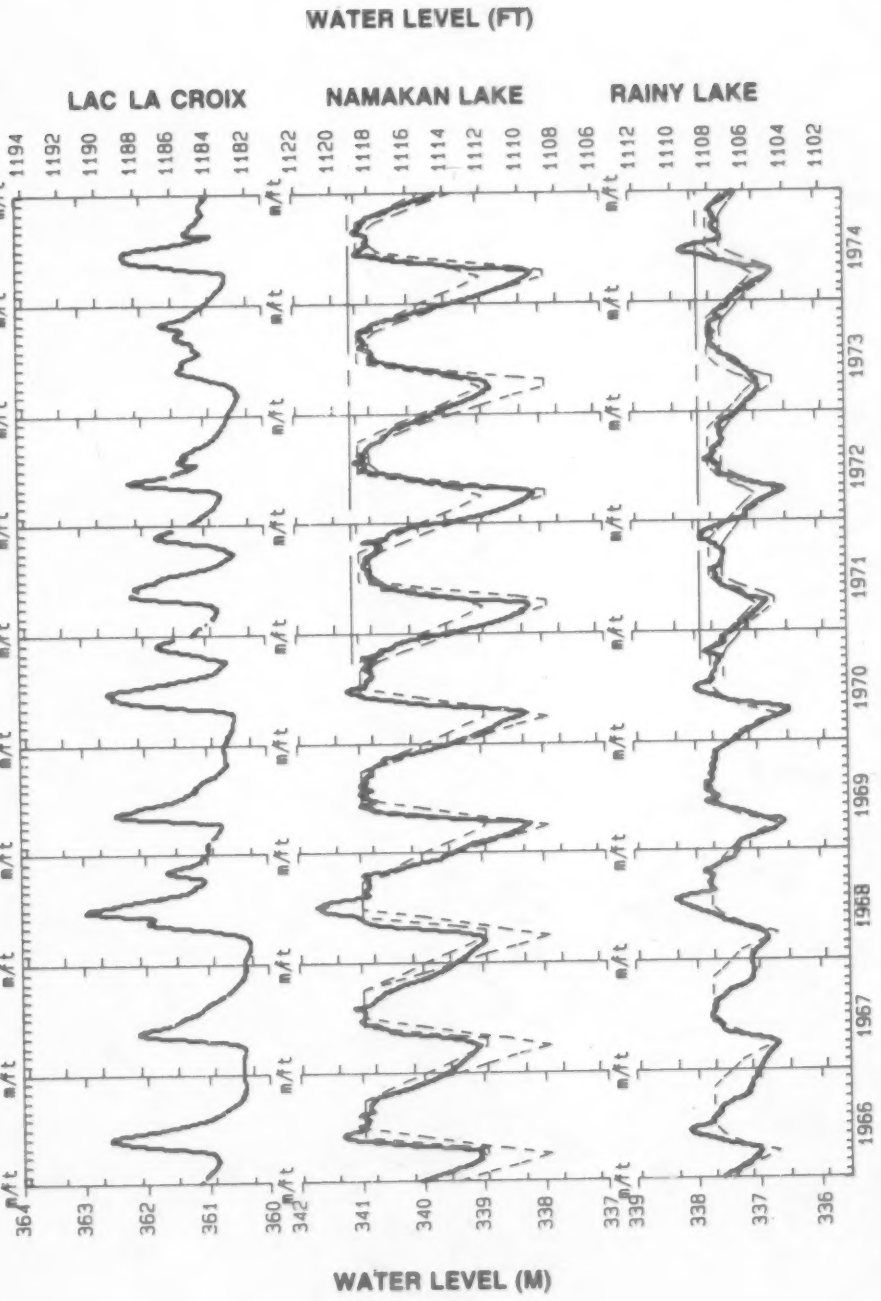
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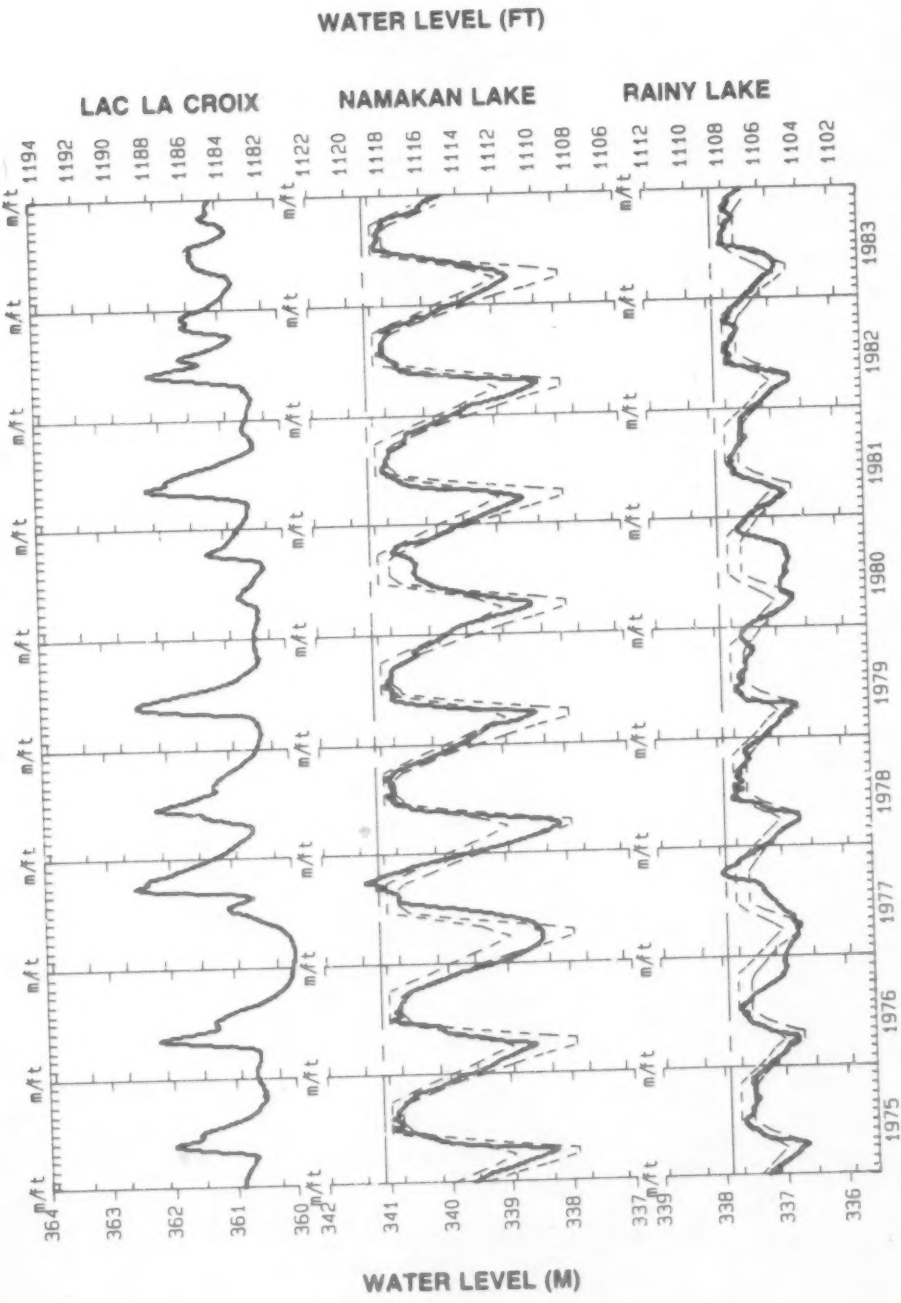
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